

EXHIBIT "D"

2/7/06 PRELIMINARY INJUNCTION

ETREPPID TECHNOLOGIES v. MONTGOMERY CV06-00114

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5 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7 BEFORE THE HONORABLE ROBERT H. PERRY, DISTRICT JUDGE
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9 ETREPPID TECHNOLOGIES, L.L.C., a
10 Nevada limited liability company.
11 Plaintiff,
12 vs. No. CV06-00114
13 DEHNIS MONTGOMERY, an individual; Dept. No. 9
14 THE MONTGOMERY FAMILY TRUST;
15 DEHNIS MONTGOMERY and BACHDA
16 MONTGOMERY, as Trustees for THE
17 MONTGOMERY FAMILY TRUST, and
18 DOES 1 through 20.
19 Defendants
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LIZA CHAPEN, CCR, RMR (775) 323-5492

LIZA CHAPEN, CCR, RMR (775) 323-5492

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ETREPPID TECHNOLOGIES v. MONTGOMERY CV06-00114

<p style="text-align: center;">5</p> <p>1 RENO, NEVADA, Tuesday, February 7, 2006, 9:01 A.M.</p> <p>2 -oOo-</p> <p>3</p> <p>4 THE COURT: Good morning.</p> <p>09:01 5 Please be seated.</p> <p>6 All right. We're in session for</p> <p>7 CV06-00114. We're here for a hearing on a</p> <p>8 Preliminary Injunction.</p> <p>9 Would counsel state your appearances for</p> <p>09:02 10 the court reporter.</p> <p>11 MR. PEEK: Good morning, your Honor.</p> <p>12 Stephen Peek on behalf of the Plaintiff,</p> <p>13 eTreppid Technologies.</p> <p>14 Also with me this morning, and you signed</p> <p>09:02 15 the order on the pro hac vice, is David Jakopin,</p> <p>16 co-counsel; Doug Frye, manager of eTreppid; and</p> <p>17 Warren Trepp, also manager and chief executive</p> <p>18 officer of eTreppid.</p> <p>19 THE COURT: All right. Thank you.</p> <p>09:02 20 MR. LOGAR: Your Honor, if it please the</p> <p>21 Court, I'm Ronald Logar representing the Defendant,</p> <p>22 along with Mr. Eric Pulver in my office.</p> <p>23 I would like to introduce to you a Michael</p> <p>24 J. Flynn.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: center;">7</p> <p>1 MR. LOGAR: And then I'd like to introduce</p> <p>2 Mr. Philip Stillman. Mr. Stillman is a member in</p> <p>3 good standing of both the Massachusetts and the State</p> <p>4 Bar of California.</p> <p>09:04 5 He has made application to the State Bar</p> <p>6 of Nevada for admission and approval pro hac vice.</p> <p>7 His Certificate of Good Standing was sent to the</p> <p>8 State Bar's office in Las Vegas yesterday by the</p> <p>9 State of California.</p> <p>09:04 10 It's expected that the State Bar of</p> <p>11 Massachusetts will send the Certificate of Good</p> <p>12 Standing to the Las Vegas office today, and then the</p> <p>13 Las Vegas office will issue its approval and we</p> <p>14 expect that within the next two days.</p> <p>09:04 15 The delay on Mr. Stillman is due to the</p> <p>16 fact that Mr. Stillman provided with his application</p> <p>17 to the State Bar recent admission before a Federal</p> <p>18 Court in the State of California; however, since it</p> <p>19 was beyond 30 days' time of issuance from the date of</p> <p>09:04 20 application, the State Bar said they needed something</p> <p>21 more current, so that is the --</p> <p>22 MR. PEEK: Your Honor, absent the approval</p> <p>23 by the State Bar, I would object to his admission</p> <p>24 until the State Bar has at least had its opportunity</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: center;">6</p> <p>1 MR. FLYNN: Good morning, your Honor.</p> <p>2 MR. LOGAR: Mr. Flynn is a member of the</p> <p>3 Massachusetts Bar. The application for admission to</p> <p>4 pro hac vice has been made.</p> <p>09:03 5 The Massachusetts Bar has sent a</p> <p>6 Certificate of Good Standing to the State Bar of</p> <p>7 Nevada. The State Bar of Nevada has issued its</p> <p>8 approval.</p> <p>9 It was over-nighted yesterday to my</p> <p>09:03 10 office. It should be received by Federal Express</p> <p>11 about 10:00 or 10:30 this morning, having complied</p> <p>12 with the Supreme Court rule as to admission, and we</p> <p>13 ask that Mr. Flynn be permitted to appear in this</p> <p>14 matter on behalf of the Defendant.</p> <p>09:03 15 MR. PEEK: Your Honor, I would have no</p> <p>16 objection based on that representation that it is</p> <p>17 being over-nighted and should be here today. I</p> <p>18 accept Mr. Logar's representation as an officer of</p> <p>19 this court.</p> <p>09:03 20 So I certainly -- although I've not seen</p> <p>21 the pro hac vice application, I expect the Bar to do</p> <p>22 their job.</p> <p>23 THE COURT: All right. On that basis,</p> <p>24 that will be fine. We'll allow that.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: center;">8</p> <p>1 to vet and receive, if you will, and then approve.</p> <p>2 I would object until that process has been</p> <p>3 approved.</p> <p>4 MR. STILLMAN: Your Honor, may I?</p> <p>09:05 5 THE COURT: No. Mr. Logar.</p> <p>6 MR. LOGAR: Well, you know, you indicated</p> <p>7 to us, your Honor, when we had our meeting last week</p> <p>8 that you have had some difficulty with the</p> <p>9 representations of counsel in the past.</p> <p>09:05 10 I don't know how to respond to that, other</p> <p>11 than the fact that if there was any indication by way</p> <p>12 of either Mr. Flynn or Mr. Stillman that there was a</p> <p>13 problem, the application would not have even been</p> <p>14 filed, nor would I have considered the association.</p> <p>09:05 15 I make the representation to the Court in</p> <p>16 good faith and ask that Mr. Stillman be allowed to</p> <p>17 participate subject to approval and an order signed</p> <p>18 by this Court this week.</p> <p>19 MR. PEEK: Your Honor, if this were a</p> <p>09:06 20 situation where there weren't already able counsel --</p> <p>21 I count four at counsel table right now -- to</p> <p>22 represent Mr. Montgomery and the Montgomery Trust, I</p> <p>23 probably would not have that objection, and I also</p> <p>24 know, respectfully to Mr. Logar, whose</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">9</p> <p>1 representations I accept, but he does not speak for 2 the State Bar. 3 So until the State Bar has spoken, I think 4 that my objection under SCR Rule 42 is well taken and 09:06 5 should be honored. 6 THE COURT: Well, the rule, if I recall 7 it, SCR 42, says that until approval and the order is 8 signed, that the out-of-state counsel shall not be 9 allowed to actively participate. 09:06 10 I think with this objection, I'm bound by 11 the rule so I cannot -- I will allow the first 12 gentleman to participate, but I cannot -- 13 MR. LOGAR: I understand, your Honor. 14 THE COURT: If it weren't for the rule, I 09:07 15 would. 16 MR. LOGAR: I understand. 17 THE COURT: But one of the things I'm 18 finding out the longer I'm up here is there are a lot 19 of things that judges think they can do that, if you 09:07 20 read the rule, they can't, and this is one of them. 21 I think the rule says "shall not" and 22 so -- 23 MR. LOGAR: Well, that is "participate," 24 but I believe that it's permissible, Mr. Stillman can LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">11</p> <p>1 making the objection; if Mr. Jakopin is presenting 2 the witness, he's the one making the objection. 3 I assume that that will be the procedural 4 order of this Court today, that whoever is presenting 09:08 5 that witness or cross-examining will be the one 6 making the objections. 7 THE COURT: All right. Yes, I'd like to 8 try to do that just for the purpose of order and 9 organization. 09:08 10 Again, you know, I'm interested mostly in 11 finding out what the truth is here and so that is the 12 first goal; procedural propriety is the second one. 13 So, you know, if something comes up that 14 somebody needs to say something and it's not 09:08 15 something that we're doing all day long, that's fine. 16 So with that in mind, Mr. Peek, are you 17 ready to proceed? 18 MR. PEEK: We are ready to proceed, your 19 Honor. 09:09 20 THE COURT: All right. 21 MR. FLYNN: Good morning, your Honor. 22 Thank you for granting my admission. 23 Before we proceed, I need to address the 24 Court about an urgent and immediate procedural LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">10</p> <p>1 confer with us. 2 THE COURT: Oh, sure. I don't see a 3 problem with that. I don't see a problem with being 4 able to talk to him. 09:07 5 I think that the rule talks about 6 participate in settlement conferences and various 7 other things, but I don't see -- I don't see that 8 there would be any reason why you couldn't confer 9 with him. 09:07 10 MR. PEEK: And I have no objection to him 11 sitting before the Bar either, your Honor. 12 THE COURT: Right. 13 MR. PEEK: It's just a matter of 14 participating. 09:07 15 THE COURT: Well, I'm hopeful that we're 16 not going to have, you know, every time there's a 17 argument, that every lawyer on each side is going to 18 speak, anyway; I'd like to try to keep it a little 19 bit more organized than that. 09:08 20 So I think that we're going to have some 21 conferencing on both sides. 22 MR. PEEK: Your Honor, with that in mind, 23 I'm mindful of that rule and generally what I have 24 seen is that if I'm presenting a witness, I'm the one LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">12</p> <p>1 problem with regard to how we proceed. 2 THE COURT: All right. 3 MR. FLYNN: And I'm going to be limited as 4 to how much I can flesh out to the Court because of 09:09 5 the nature of what I'm going to describe to the 6 Court. 7 Let me preface my remarks by saying that 8 what we're involved in here is of the highest, most 9 secretive, most urgent, most immediate classified 09:09 10 security information, that I think, after the Court 11 gets an idea what it is, will agree with me, that can 12 be possibly imagined by this Court. 13 So at the outset, we're dealing with the 14 fact that who has a security clearance in the 09:10 15 courtroom and who does not, because everything I'm 16 going to describe peripherally involves this secret 17 information which goes to the heart, the core issues 18 of what this Court has to decide, including the core 19 issue of what proprietary information is involved and 09:10 20 who owns it. 21 The dichotomy existent within eTrepid 22 Technologies, between the original deal that was made 23 under the Contribution Agreement, which I understand 24 the Court has seen, for data compression technology LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>13</p> <p>1 has been merged into by the Plaintiff</p> <p>2 MR. PEEK: Your Honor, I --</p> <p>3 MR. FLYNN: The issues --</p> <p>4 MR. PEEK: I appreciate counsel's</p> <p>09:10 5 eloquence, but this is not a filibuster. If there's</p> <p>6 a motion to be made, make a motion.</p> <p>7 You asked if I was ready to proceed; I'm</p> <p>8 ready to proceed on my motion.</p> <p>9 If there's a motion to be made, as opposed</p> <p>09:11 10 to the superlatives and the filibuster, I'd like to</p> <p>11 hear the motion so that we can address if there is a</p> <p>12 motion of urgency to be made, but otherwise I'd like</p> <p>13 to proceed with my case.</p> <p>14 The Court told us we only have today to do</p> <p>09:11 15 this. We have already had over two weeks of delay</p> <p>16 from Mr. Montgomery and I don't want one more delay.</p> <p>17 So I would appreciate, your Honor, this is</p> <p>18 my case, I'd like to proceed with my case.</p> <p>19 THE COURT: All right. I believe he's</p> <p>09:11 20 prefacing what he's saying as a preface to some kind</p> <p>21 of a request or motion.</p> <p>22 MR. FLYNN: That's correct, your Honor.</p> <p>23 If the Court will indulge me --</p> <p>24 THE COURT: I will.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>15</p> <p>1 for the Court to even issue any type of an order or</p> <p>2 findings, given the nature of the issues involved,</p> <p>3 because I would submit to the Court that the national</p> <p>4 security interests preempt Judicial intervention in</p> <p>09:13 5 this Court, and that's a strong statement</p> <p>6 I believe that the entire proceedings have</p> <p>7 to ultimately go over to the Federal Court, be sealed</p> <p>8 in the Federal Court, and even then how they are</p> <p>9 going to be able to proceed is frankly a mystery to</p> <p>09:13 10 me, your Honor.</p> <p>11 So here's what I -- here is what the</p> <p>12 defense recommends: Let the Plaintiff go forward to</p> <p>13 December '02. I've got a chronology that I can give</p> <p>14 to the Court which will basically outline the</p> <p>09:13 15 impending problems.</p> <p>16 Once we reach December '02, we're going</p> <p>17 into the heart of classified material. At that</p> <p>18 point, I don't know how we can proceed except for the</p> <p>19 Court to take Mr. Trepp and Mr. Montgomery into</p> <p>09:14 20 chambers and inquire into the nature of the material.</p> <p>21 THE COURT: Well, let's see how it goes.</p> <p>22 My thought, and again, I'm probably the</p> <p>23 least educated individual in the courtroom as far as</p> <p>24 what this involves, but my thought is that we're not</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>14</p> <p>1 MR. FLYNN: -- for five minutes.</p> <p>2 THE COURT: I will. Go ahead.</p> <p>3 MR. FLYNN: The dichotomy that exists in</p> <p>4 eTreppid between the technology that was the subject</p> <p>09:11 5 of the Contribution Agreement and the most classified</p> <p>6 information relating to the technology that's at the</p> <p>7 core of this case is the problem.</p> <p>8 We could proceed, I believe, up to</p> <p>9 December 19th, 2002, in open court, as long as the</p> <p>09:12 10 court is sealed and perhaps no one else other than</p> <p>11 the deputy sheriff, the clerk, and the court</p> <p>12 reporter. I think we're safe there as long as the</p> <p>13 courtroom is sealed even during that phase.</p> <p>14 Once we reach 2002, I think the Court is</p> <p>09:12 15 going to have to conduct some type of a procedure,</p> <p>16 and I've been thinking all night what you could do,</p> <p>17 and the only thing I can come up with, because of the</p> <p>18 nature of this information, is for you alone to take</p> <p>19 Mr. Trepp and Mr. Montgomery into chambers with a</p> <p>09:12 20 sworn confidentiality oath by your Honor, under oath,</p> <p>21 and have them basically explain what is involved.</p> <p>22 I think the Court will then see that it is</p> <p>23 absolutely impossible, given the national security</p> <p>24 interests involved, right now, this minute, today,</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>16</p> <p>1 here necessarily to talk about the content of</p> <p>2 whatever "it" is, but the ownership and the right to</p> <p>3 possession of "it," and so it would seem to me, and I</p> <p>4 don't know this yet, but it would seem to me that we</p> <p>09:14 5 can talk about all of those issues and perhaps make a</p> <p>6 determination on those issues without even talking</p> <p>7 about what the contents of "it" are, and if I'm</p> <p>8 wrong, then you can explain that to me, and if I</p> <p>9 agree with you, then I agree with you.</p> <p>09:14 10 So I'd like to go ahead and give it a</p> <p>11 shot.</p> <p>12 Secondly, I would like to have some</p> <p>13 reference to some case law, a statutory law, some</p> <p>14 other authority that says that -- that, one,</p> <p>09:15 15 identifies this as classified; two, tells us what</p> <p>16 level of classification that it has; three, by whom;</p> <p>17 and then some kind of statutory case law or other</p> <p>18 documentation that would tell us that it was not</p> <p>19 proper for me to proceed, for us to proceed in this</p> <p>09:15 20 court, and if I'm persuaded that that's right, then</p> <p>21 certainly I'll follow the rules.</p> <p>22 I'm surprised I haven't heard from the</p> <p>23 federal government, if they have such a concern, but</p> <p>24 maybe you can address that</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>17</p> <p>1 MR. FLYNN: This information is so</p> <p>2 secretive, and so compartmentalized within the</p> <p>3 federal government, that there are very few</p> <p>4 individuals within the federal government that have</p> <p>09:15 5 access to it.</p> <p>6 I will tell the Court in open court what</p> <p>7 is involved, involved daily briefings to President</p> <p>8 Bush over the last two years, daily briefings.</p> <p>9 And with regard to your Honor's other</p> <p>09:16 10 point covering the "it" without getting into the</p> <p>11 content, the "it" is the content.</p> <p>12 THE COURT: We'll see.</p> <p>13 MR. LOGAR: Your Honor, we would like to</p> <p>14 invoke the rule as to exclusion of witnesses for</p> <p>09:16 15 sealing and everything we can do to protect the</p> <p>16 integrity of these proceedings.</p> <p>17 THE COURT: All right. I don't know the</p> <p>18 gentleman seated in the front row back there.</p> <p>19 MR. PEEK: He's a witness of ours, your</p> <p>09:16 20 Honor. He will step out.</p> <p>21 THE COURT: All right.</p> <p>22 MR. PEEK: I don't know who the other --</p> <p>23 THE COURT: And the other gentleman is my</p> <p>24 law clerk. He will observe the order that I will</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>19</p> <p>1 and I say that -- and I'm curious to hear counsel's</p> <p>2 argument, when we certainly, last Wednesday, heard</p> <p>3 much about, "I need to be able to talk about my</p> <p>4 technology to be able to sell my technology," and</p> <p>09:17 5 if -- we had, as you recall, much ado about what the</p> <p>6 ability was to discuss with others, so I'll take that</p> <p>7 as a stipulation and I'd ask the Court to enter that</p> <p>8 kind of an order.</p> <p>9 THE COURT: Well, I'm happy to do that on</p> <p>09:18 10 the record right now and I will enter that order and</p> <p>11 it is entered in the record.</p> <p>12 Does that contain, for the moment, all of</p> <p>13 the issues that you wanted to address with regard to</p> <p>14 confidentiality?</p> <p>09:18 15 And I would ask that, in addition, that</p> <p>16 you prepare some type of a stipulation that meets the</p> <p>17 concerns you articulated a minute ago, first present</p> <p>18 it to the other side, present it to me, and then I'll</p> <p>19 review it, and particularly, if you have reference to</p> <p>09:18 20 any statutory authority or anything else, put that in</p> <p>21 the stipulation and order, and I'll take a look at it</p> <p>22 and sign it, more likely than not, particularly if</p> <p>23 all sides -- if both sides approve.</p> <p>24 MR. FLYNN: We're happy to do it, your</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>18</p> <p>1 make here with regard to confidentiality.</p> <p>2 MR. PEEK: Your Honor, we will have an</p> <p>3 expert who will come in, and I would like him, of</p> <p>4 course, to sit in.</p> <p>09:16 5 I think it's appropriate to have an expert</p> <p>6 to at least sit in on rebuttal, if necessary.</p> <p>7 MR. FLYNN: Your Honor, I think Mr. Frye,</p> <p>8 unless he's the first witness, should be removed from</p> <p>9 the courtroom.</p> <p>09:17 10 MR. PEEK: Your Honor, he's a client.</p> <p>11 He's a private client. He's a member manager of the</p> <p>12 company.</p> <p>13 THE COURT: He can stay.</p> <p>14 MR. PEEK: Your Honor, respectfully to</p> <p>09:17 15 what counsel had said earlier, I take that also to be</p> <p>16 that they would at least offer a stipulation that the</p> <p>17 proceedings conducted here today, the affidavits that</p> <p>18 have been previously submitted under seal, and the</p> <p>19 transcript of these proceedings may remain</p> <p>-- 20 confidential, and may be sealed by this Court only to</p> <p>21 be opened upon motion --</p> <p>22 THE COURT: Well --</p> <p>23 MR. PEEK: -- and that nothing other than</p> <p>24 that which is stated here today can go any farther,</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>20</p> <p>1 Honor.</p> <p>2 We will prepare the stipulation. The</p> <p>3 problem will become, as your Honor will hopefully be</p> <p>4 able to learn during these proceedings, that even the</p> <p>09:19 5 attorneys cannot be given access to this information.</p> <p>6 THE COURT: Do you have access to it?</p> <p>7 MR. FLYNN: I have limited access, enough</p> <p>8 to conduct the proceedings.</p> <p>9 THE COURT: Do you have --</p> <p>09:19 10 MR. FLYNN: Do I have complete access?</p> <p>11 Absolutely not.</p> <p>12 THE COURT: Do you have a security</p> <p>13 clearance of any kind?</p> <p>14 MR. FLYNN: No, and neither does -- do the</p> <p>09:19 15 gentlemen on the other side of the aisle.</p> <p>16 MR. PEEK: And, your Honor, I don't have</p> <p>17 access to the material and I have not had access to</p> <p>18 the material because the source code has been deleted</p> <p>19 from our file and taken from our premises.</p> <p>09:19 20 THE COURT: All right. Well, you know, I</p> <p>21 don't have enough information right yet to know -- to</p> <p>22 make an intelligent --</p> <p>23 MR. PEEK: I will review the stipulation,</p> <p>24 your Honor --</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

1 THE COURT: All right.

2 MR. PEEK: -- and make sure that it isn't
3 too overly broad, because what I'm hearing here
4 today, I think, maybe too overly broad.

5 THE COURT: Well, we'll see. 00:22

6 MR. PEEK: With that in mind, your Honor,
7 Mr. Jakopin will be presenting the first witness.

8 THE COURT: All right. Let's go.

9 (The witness was sworn.)

10 THE COURT: Please take the witness stand. 00:22

11 As a preliminary matter, for the record,
12 not only are the parties and counsel but court staff,
13 as well, and I include myself in this, are instructed
14 that anything that's said or done here in this
15 courtroom today, pending the submission and approval 00:22
16 of an order, is confidential and will not be
17 discussed with third parties outside of the
18 courtroom, except to the extent that it needs to be
19 discussed with witnesses and experts with regard
20 specifically to the pursuit of the proceedings in 00:23
21 this particular case.

22 Go ahead.

23 MR. JAKOPIN: Did you swear the witness?

24 (Discussion off the record.)

1

SLOAN VENABLES,

2

called as a witness, having been first duly sworn,

3

testified as follows:

4

5

DIRECT EXAMINATION

6

BY MR. JAKOPIN:

7

Q. Your name, please.

8

A. Sloan Venables.

9

Q. Where do you reside?

10

A. In the Virginia City Highlands.

00:23

11

THE REPORTER: Would you spell your name
for me, please.

13

THE WITNESS: First name, S-l-o-a-n; last
name --

15

MR. LOGAR: Your Honor, I'm sorry. I'm
having difficulty hearing the witness. Could he use
the microphone, please.

00:23

18

THE COURT: Hopefully it works.

19

Why don't you try to speak up and try to
use the microphone.

00:23

21

We had some difficulty with it last week;
is it working now?

23

THE BAILIFF: Is the button below you on
the left-hand side, on the ground, is it on? Is it

24

1 lit up?

2 THE COURT: Yes.

3 THE BAILIFF: Then, it should be working.

4 THE COURT: Okay.

5 THE WITNESS: Can you hear me? 00:23

6 THE BAILIFF: Now, try it.

7 THE COURT: There we go.

8 THE WITNESS: How about now?

9 Last name, V-e-n-a-b-l-e-s.

10 THE COURT: All right. Mr. Venables, just 00:24
11 try to speak up a little bit, too.

12 THE WITNESS: All right.

13 THE BAILIFF: You have a volume control,
14 your Honor, right up by your own speaker.

15 THE COURT: All right. How is that? 00:24

16 THE WITNESS: How about now?

17 THE COURT: Yeah, I think that's better.

18 MR. LOGAR: That's better.

19 MR. PEEK: Thank you, your Honor.

20 THE COURT: Okay. 00:24

21 BY MR. JAKOPIN:

22 Q. Can you describe your educational
23 background since high school?

24 A. Since high school, I went to UC Berkeley

1 briefly, or for three years; then, I went to graphic
2 design school, learned 3D modeling and computer
3 programming; and since then, I've been self-taught in
4 computer programming.

5 MR. JAKOPIN: Your Honor, our expert is
6 outside and the bailiff is not permitting him to come
7 in.

00:24

8 Can we have permission to have him come
9 into the courtroom and attend the proceedings?

10 THE COURT: All right. I'll allow him,
11 and any expert for the other side, too, if you've got
12 one.

00:25

13 MR. FLYNN: We have no expert at the
14 present time, your Honor.

15 We object. Under the documents that
16 Mr. Trepp and Mr. Montgomery signed with the
17 [REDACTED] department of the U.S. Government
18 involved in this case, they would be precluded from
19 confiding anything to any expert.

00:25

20 THE COURT: Well, I've got to see the
21 documents. I've got to see some authority. Unless I
22 do, I'm going to permit him to be here.

00:25

23 MR. FLYNN: Nor has he been disclosed to
24 us, your Honor.

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<p>25</p> <p>1 THE COURT: I'm still going to permit him, 2 absent being provided with those documents and 3 material. 4 MR. FLYNN: Your Honor will note my 09:23 5 objection. 6 THE COURT: All right. It's noted 7 Go ahead. 8 MR. JAKOPIN: Thank you, your Honor. 9 BY MR. JAKOPIN: 09:23 10 Q. Can you describe your employment from the 11 time you finished schooling up until eTreppid, 12 briefly 13 A. I worked most recently before eTreppid for 14 about ten years in the video game industry making 09:23 15 computer games from the PC platform. Initially, I 16 was a 3-D modeler and then later on as a programmer. 17 My most recent job before coming to 18 eTreppid, I was a lead programmer on the last couple 19 of video games made for electronic cards. 09:24 20 Q. And you began working at eTreppid when? 21 A. In December of '99. 22 Q. And were you one of the first employees? 23 A. That's correct. 24 Q. Who was working there at the time you LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>27</p> <p>1 facility security clearances and procedures. 2 Q. You work with a lot of different kind of 3 electronic information, correct? 4 A. That's right. 09:25 5 Q. Could you describe some of the different 6 types of information that is stored at the company 7 premises? 8 A. We have, first of all, the source code, 9 which is a -- basically, source code is a lot of text 09:26 10 files that is compiled into an actual runnable 11 program; all of the tools that we use to develop the 12 source code, which is usually third-party software, 13 Microsoft developed programs; also all the other 14 third-party software that we use, the operating 09:26 15 systems, other tools for developing. 16 So all that stuff is stored, as well as 17 sample files that we use to run our code on; images, 18 movies, bit maps, all kinds of files. 19 Q. Are there certain files that are 09:26 20 classified files, and there's other files that are 21 not? 22 A. That's correct, based on where the content 23 came from and who we received it from. 24 Usually, a source code isn't classified. LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>26</p> <p>1 started? 2 A. Dennis Montgomery; his son, Brian 3 Montgomery; and they had three contractor Indian 4 nationals that are no longer there. 09:24 5 They were just briefly there the first 6 year that I worked there. 7 Q. And when you began, what position did you 8 have with the company? 9 A. I was initially hired to be a director of 09:24 10 game development. I brought my video game technology 11 that I developed on my own with me and sublicensed it 12 to eTreppid and continued further development on it 13 for a game that we would someday release from the 14 company. 09:25 15 Q. So when you worked at eTreppid, then what 16 did you do? 17 A. Gradually took on more tasks, began doing 18 all the IT work for the company, all the e-mail, the 19 WEBSERVER, all the network infrastructure, gradually 09:25 20 took on all the hardware purchasing, all the hardware 21 development. 22 Most recently, in the past two years, I've 23 taken on the role of our facility security officer. 24 I maintain all of the security clearances and the LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>28</p> <p>1 So far, we haven't had any classified 2 source codes, but the bit map images or frames of 3 pictures have been classified. 4 Q. That would not be all images, but just 09:26 5 certain ones? 6 A. That's correct. 7 Q. When you say the eTreppid source code, 8 what are you referring to? 9 A. The actual C++ files that are used to be 09:27 10 compiled into the software we develop. 11 Q. And who writes that source code? 12 A. Various programmers in the building. 13 Q. Have you written some of that source code? 14 A. Not for a while. 09:27 15 The last stuff I worked on was about 2002. 16 I worked on a player that we developed for a project 17 with Intel. 18 I've also worked on the game engine over 19 the years that we developed. 09:27 20 Other than that, I haven't. 21 Q. Are you responsible for backing up any 22 information at the company? 23 A. I back up all of our servers that run all 24 of our infrastructure, our e-mail, our web sites, but LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">29</p> <p>1 I don't do any of the source code backup; that was</p> <p>2 all Mr. Montgomery's job.</p> <p>3 Q. And how long have you been doing that?</p> <p>4 A. Pretty much from the beginning; the past</p> <p>09:28 5 six years.</p> <p>6 Q. And why do you back up that information?</p> <p>7 A. Hardware always fails. You've got to have</p> <p>8 a backup so you can recover from it.</p> <p>9 I haven't lost a file since we've been in</p> <p>09:28 10 existence. Hardware always tends to fail from</p> <p>11 overheating or what have you, mechanical failure, so</p> <p>12 if you don't have backups, you won't be able to</p> <p>13 recover from it.</p> <p>14 Q. Now, is it your understanding that the</p> <p>09:28 15 company backed up its source code for the same</p> <p>16 reason?</p> <p>17 A. Right.</p> <p>18 Q. Up until recently, had the company ever</p> <p>19 lost any of the source code?</p> <p>09:28 20 A. Not to my knowledge.</p> <p>21 Q. Is there anyone other than Mr. Montgomery</p> <p>22 that was responsible for backing up the source code?</p> <p>23 A. No.</p> <p>24 Q. For how long had he been responsible for</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">31</p> <p>1 A. We have different levels of access.</p> <p>2 The physical access, it's in a room that's</p> <p>3 been locked that only have -- I believe, five or six</p> <p>4 people had the key to.</p> <p>09:30 5 Log-on access, only Mr. Montgomery and I</p> <p>6 had the password to it.</p> <p>7 Network access, various programmers in the</p> <p>8 building had different file-share level permissions</p> <p>9 to the folders, but none of them had a full access --</p> <p>09:30 10 full permissions to the file levels under network</p> <p>11 sharing; they had modified, which means they can add</p> <p>12 but they can't delete.</p> <p>13 Full access level was only for</p> <p>14 Mr. Montgomery and me.</p> <p>09:30 15 Q. And how was that put into place?</p> <p>16 A. We had an ET, what we call our eTrepidid</p> <p>17 administrator account, which only Mr. Montgomery and</p> <p>18 I had the password for.</p> <p>19 Only with that user account that you could</p> <p>09:30 20 get on and log on and change these permissions;</p> <p>21 otherwise, you have to go through the networking and</p> <p>22 you're subject to all the permissions that we've set</p> <p>23 up.</p> <p>24 Q. Was there a server other than the</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">30</p> <p>1 backing up the source code?</p> <p>2 A. From the beginning.</p> <p>3 Q. Was he also responsible for maintaining</p> <p>4 the source code?</p> <p>09:28 5 A. As far as I know, that was his job.</p> <p>6 Q. How was it maintained?</p> <p>7 A. We have a structure, a file system</p> <p>8 structure on our server where we kept it, and it</p> <p>9 stored various methods underneath the -- our folder</p> <p>09:29 10 structure.</p> <p>11 We have our current projects. Each</p> <p>12 project had a subfolder. We also have a subsystem</p> <p>13 of -- all the programmers in the building have</p> <p>14 locations where only they can access and store their</p> <p>09:29 15 projects.</p> <p>16 So all this file structure is all stored</p> <p>17 on one of our servers that Mr. Montgomery backed up</p> <p>18 to another set of machines in our separate location.</p> <p>19 Q. Was there a name for that server that you</p> <p>09:29 20 were just talking about?</p> <p>21 A. We call it the source server, abbreviated</p> <p>22 SRC, S-E-R-V-E-R.</p> <p>23 Q. Who had access to the source code that was</p> <p>24 on that SRCSERVER?</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">32</p> <p>1 SRCSERVER that you were referring to?</p> <p>2 A. We had another server, a couple -- well,</p> <p>3 we have several servers in the building; not all of</p> <p>4 them use our source code. E-mail servers, servers</p> <p>09:31 5 that run the infrastructure of our network.</p> <p>6 We have another server for storing all the</p> <p>7 third-party tools that we do, and another server that</p> <p>8 I had recently set up, in the past four months, that</p> <p>9 was used for a backup to the SRCSERVER.</p> <p>09:31 10 Q. Did all of these servers get accessed with</p> <p>11 the eTrepidid administrator password?</p> <p>12 A. All the servers are only logged on with</p> <p>13 the eTrepidid administrator account, that's right.</p> <p>14 Q. And it was only the two of you that had</p> <p>09:31 15 access to all of those?</p> <p>16 A. That's right. Not even Mr. Trepp knew the</p> <p>17 password to the administrator account.</p> <p>18 Q. About how large were the total eTrepidid</p> <p>19 source code files?</p> <p>09:31 20 A. Well, from my recollection of doing a</p> <p>21 backup some time back, and also I did another backup</p> <p>22 in the middle of December, it was about 200 gigabytes</p> <p>23 on the SRCSERVER that was copied over to my other</p> <p>24 backup server which I call an ISASERVER.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>33</p> <p>1 Q. And how large is the memory capacity of</p> <p>2 the ISASERVER?</p> <p>3 A. Well, the actual memory is separate from</p> <p>4 the hard drive space. There's -- all of our servers</p> <p>09:32 5 have about one to two gigabytes of memory, but that's</p> <p>6 just random access memory.</p> <p>7 The hard drive space on the SRCSERVER is</p> <p>8 about -- just shy of three terabytes. My ISASERVER</p> <p>9 is just over four terabytes, but we weren't using</p> <p>09:32 10 anywhere near the capacity on either one of those.</p> <p>11 Q. You had mentioned some other work stations</p> <p>12 that had been used for backing up the eTreppid source</p> <p>13 code?</p> <p>14 A. I built two work stations that we kept out</p> <p>09:32 15 in our warehouse area that had, each of them,</p> <p>16 attached storage box, what we call RAID storage box.</p> <p>17 Each of those stored about 1.7, 1.8 terabytes.</p> <p>18 Those are used to back up what was on</p> <p>19 SRCSERVER.</p> <p>09:33 20 Those backups were made by Mr. Montgomery</p> <p>21 on a regular basis.</p> <p>22 Q. As of, say, around December 21st, 2005 --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- what was your understanding of where</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>35</p> <p>1 But my log files, when I got back, showed</p> <p>2 that they had completed, so I had backed up</p> <p>3 everything from SRCSERVER over to this ISASERVER.</p> <p>4 Q. And did your log tell, say, when that</p> <p>09:34 5 finished?</p> <p>6 A. Some of them finished the night of the</p> <p>7 21st; some finished the next day, the 22nd.</p> <p>8 All the log files aren't there anymore;</p> <p>9 there's only a couple left. Some of them were</p> <p>09:34 10 deleted.</p> <p>11 Q. Do you have any reason to think that if it</p> <p>12 didn't occur the way you had programmed it to, that</p> <p>13 it wouldn't have been completely backed up?</p> <p>14 MR. FLYNN: Objection, your Honor.</p> <p>09:35 15 THE COURT: What's the objection?</p> <p>16 MR. FLYNN: None of this testimony -- the</p> <p>17 entire course of the testimony so far has been</p> <p>18 utterly lacking in foundation.</p> <p>19 THE COURT: Well, I think there --</p> <p>09:35 20 MR. FLYNN: I'd move to strike all of the</p> <p>21 testimony, but I'm trying to cut through it, so I</p> <p>22 don't want to keep objecting because I believe I've</p> <p>23 got a way to cut through and across --</p> <p>24 THE COURT: All right. Well --</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>34</p> <p>1 complete copies of the source code existed at</p> <p>2 eTreppid?</p> <p>3 A. As far as I know, there was the complete</p> <p>4 original copy on the SRCSERVER, as well as copies on</p> <p>09:33 5 each of these two work stations in our warehouse.</p> <p>6 The work stations in the warehouse also</p> <p>7 had copies of all the hard drives of all the</p> <p>8 programmers in the building.</p> <p>9 Those were copies made by Mr. Montgomery</p> <p>09:33 10 on a fairly regular basis. I had seen him doing it</p> <p>11 pretty often, multiple times a week over the past</p> <p>12 several years.</p> <p>13 Q. You had mentioned an ISASERVER; was it</p> <p>14 also stored there?</p> <p>09:33 15 A. Up until December 21st, that was just in</p> <p>16 testing.</p> <p>17 On December 21st, I made a copy of</p> <p>18 everything on SRCSERVER. I was going on a trip on</p> <p>19 December 22nd for the holidays, I went out of the</p> <p>20 country, and I started copies, part of them completed</p> <p>21 before I left on the 21st.</p> <p>22 I was there until about 11:00 o'clock on</p> <p>23 the night of the 21st finishing up the copies, and</p> <p>24 when I left some of them were still going.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>36</p> <p>1 MR. FLYNN: -- but none of this has any</p> <p>2 foundation.</p> <p>3 THE COURT: All right. Until I learn a</p> <p>4 little bit more about the background, it's hard for</p> <p>09:35 5 me to evaluate that.</p> <p>6 MR. FLYNN: I understand that</p> <p>7 THE COURT: There's not a jury here, so</p> <p>8 I'm going to allow the testimony.</p> <p>9 Go ahead, sir.</p> <p>09:35 10 THE WITNESS: What was the question?</p> <p>11 MR. JAKOPIN: I think you finished.</p> <p>12 I think it was just an objection after the</p> <p>13 conclusion.</p> <p>14 THE COURT: All right. For the record,</p> <p>09:35 15 the objection is overruled. I think this is</p> <p>16 foundation to what ultimately we're going to get to</p> <p>17 Seems to be, at any rate, as least as of</p> <p>18 now</p> <p>19 Go ahead</p> <p>09:35 20 BY MR. JAKOPIN:</p> <p>21 Q. Could you describe how the programmers</p> <p>22 have their work stations configured and how they</p> <p>23 relate to the SRCSERVER?</p> <p>24 A. The programmers have a hard drive on their</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">37</p> <p>1 machine outside of their regular operating system</p> <p>2 hard drive that's kept on there. Their folder called</p> <p>3 Current Source was for the projects they're currently</p> <p>4 work on.</p> <p>09:36 5 That Current Source folder contains their</p> <p>6 working in progress and the projects that they're</p> <p>7 currently programming on. Those folders are copied</p> <p>8 by Dennis over to the two work stations we keep in</p> <p>9 our warehouse for backing those up.</p> <p>09:36 10 Q. And do the programmers have personal work</p> <p>11 stations?</p> <p>12 A. Every programmer has at least one.</p> <p>13 Some of them have two for testing</p> <p>14 purposes.</p> <p>09:36 15 Q. What's the operating system on the work</p> <p>16 stations that they have?</p> <p>17 A. Windows XP, on the majority.</p> <p>18 There's a few that have Windows 2000 for</p> <p>19 testing, and then they were programming with some</p> <p>09:36 20 older code that wouldn't compile on windows XP.</p> <p>21 Q. Directing your attention to the last day</p> <p>22 that you were at the office before you went on your</p> <p>23 vacation.</p> <p>24 A. Uh-huh.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">39</p> <p>1 setting up the ISASERVER and running the backups.</p> <p>2 And the next morning, I left on my trip to</p> <p>3 Budapest.</p> <p>4 Q. You were gone until when?</p> <p>09:38 5 A. I got back the late night of the 2nd,</p> <p>6 January 2nd.</p> <p>7 Q. And did you at some point go back to the</p> <p>8 office?</p> <p>9 MR. LOGAR: Could you speak up, please.</p> <p>09:38 10 I'm sorry.</p> <p>11 BY MR. JAKOPIN:</p> <p>12 Q. At some point did you go back to the</p> <p>13 office?</p> <p>14 A. The morning of the 3rd, I came to work.</p> <p>09:38 15 Q. What did you discover then?</p> <p>16 A. When I got into the office, I noticed</p> <p>17 that -- my office is situated right next to our</p> <p>18 server room with the door so I can see through to my</p> <p>19 servers, and I noticed that somebody had been doing</p> <p>09:38 20 something on our SRCSERVER.</p> <p>21 And so I went over and looked at it and</p> <p>22 there was a command prompt window up doing something</p> <p>23 which I didn't know what it was, and Dennis came in</p> <p>24 at that point and I asked him what he was doing and</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">38</p> <p>1 Q. Can you describe what happened that day?</p> <p>2 A. I came in that day.</p> <p>3 At the beginning of the day, I called as I</p> <p>4 was coming in for some reason, I forget what it was.</p> <p>09:37 5 I called Dennis and he asked me if I'd</p> <p>6 gotten all my preparation ready for my trip and I</p> <p>7 said no, and he said, "Well, stay home and do your</p> <p>8 packing or whatever," and I told him I was almost to</p> <p>9 the office anyway, so I was coming in. I wanted to</p> <p>09:37 10 get the ISASERVER finished setting -- setting up and</p> <p>11 doing the backups.</p> <p>12 We had talked about setting the ISA up for</p> <p>13 doing the backups of SRCSERVER and also our</p> <p>14 DEVSERVER.</p> <p>09:37 15 So I came in and I got my stuff arranged</p> <p>16 in my office and I went out to the warehouse, and</p> <p>17 that's when I noticed that the work -- one of the</p> <p>18 work stations that had the RAID box attached to it</p> <p>19 was gone, and I asked Dennis where it was.</p> <p>09:37 20 This was one of the ones that he used for</p> <p>21 backing up the SRCSERVER.</p> <p>22 And he said he'd taken it home, and he</p> <p>23 didn't tell me why.</p> <p>24 And so then the rest of the day I spent</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">40</p> <p>1 he said he was doing some clean-up work, getting rid</p> <p>2 of old stuff we didn't need anymore.</p> <p>3 So then I believe one of our employees,</p> <p>4 Jim Bauder, came in at that point and started talking</p> <p>09:39 5 to me like he usually does each morning, and Dennis</p> <p>6 left.</p> <p>7 So then I started going over the SRCSERVER</p> <p>8 and noticed that most of our subfolders on that -- on</p> <p>9 our source RAID box had been all deleted out.</p> <p>09:39 10 Q. What did you do then?</p> <p>11 A. I went to go look on my backup server,</p> <p>12 ISASERVER. They're all attached to the same monitor</p> <p>13 and keyboard, so I just do a command to switch over</p> <p>14 to the next computer, and that machine was totally</p> <p>09:39 15 locked up. I couldn't log on to it. It wasn't</p> <p>16 responding at all.</p> <p>17 So then I went back to my desk and tried</p> <p>18 to look at that machine through the network and I</p> <p>19 could see the ISA box was responding, that ISA's RAID</p> <p>09:40 20 was responding through the network and it also had</p> <p>21 been completely deleted out.</p> <p>22 Q. Did you ask Mr. Montgomery about this?</p> <p>23 A. Right away -- I think I talked to some</p> <p>24 other people, asked what happened while I was gone,</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">41</p> <p>1 and they said strange stuff had been going on. Stuff</p> <p>2 had been gradually being deleted.</p> <p>3 Then, I went out to the warehouse to ask</p> <p>4 him about it and I asked him where the backup was and</p> <p>09:40 5 he said he was bringing that -- the backup work</p> <p>6 station with the RAID box from our warehouse, that he</p> <p>7 was bringing it back, he was done with it or</p> <p>8 something like that.</p> <p>9 But he never told me what happened on the</p> <p>09:40 10 SRCSERVER. He said he didn't do anything or</p> <p>11 something to that effect.</p> <p>12 Q. What happened the rest of that week?</p> <p>13 A. I was going over the machines, assessing</p> <p>14 what the damages were while I was gone. I was trying</p> <p>09:40 15 to get ISA back up, realized that one -- something</p> <p>16 had happened to it.</p> <p>17 It had been working in my office for a</p> <p>18 good three months before I put it into its permanent</p> <p>19 location, so I figured something was -- something had</p> <p>09:41 20 happened to it while I was gone, either malfunction</p> <p>21 or sabotage.</p> <p>22 Also, I started asking all the people in</p> <p>23 the building what had been going on, and they told me</p> <p>24 that Dennis had deleted all the code off their</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">43</p> <p>1 Q. What happened the week, I guess, beginning</p> <p>2 January 9th?</p> <p>3 A. Well, on the 8th, which is a Sunday,</p> <p>4 Mr. Trepp called me at home and asked me if anything</p> <p>09:42 5 unusual had been happening, and I told him that when</p> <p>6 I got back from my trip that all the code on our</p> <p>7 SRCSERVER had been deleted off.</p> <p>8 So he asked me to come in early the next</p> <p>9 day to talk about it, and asked Mr. Montgomery what</p> <p>09:42 10 was going on.</p> <p>11 When I got in that day, Mr. Montgomery was</p> <p>12 only there for like an hour or two and he left and</p> <p>13 never came back for the rest of the day.</p> <p>14 So that day we started looking around the</p> <p>09:42 15 building to see what else was missing, and we had</p> <p>16 basically everyone in the building going through</p> <p>17 stuff.</p> <p>18 He said he was coming back but he never</p> <p>19 came -- Mr. Montgomery never came back.</p> <p>09:43 20 So we spent most of the night -- I was</p> <p>21 also getting ready for my visits on the 10th. I had</p> <p>22 Jay Dixon from the Defense Security Service there</p> <p>23 first thing in the morning.</p> <p>24 And also when I got there that morning --</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">42</p> <p>1 machines while I was gone, and that he was</p> <p>2 gradually -- just giving them little bits and pieces</p> <p>3 to work on.</p> <p>4 MR. FLYNN: Objection, your Honor; move to</p> <p>09:41 5 strike. Hearsay, speculation, lacks foundation.</p> <p>6 He's just guessing.</p> <p>7 THE COURT: I think as to hearsay, it's --</p> <p>8 It is hearsay; I will sustain it.</p> <p>9 MR. JAKOPIN: It's just foundational, your</p> <p>09:41 10 Honor. It's not --</p> <p>11 THE COURT: It's not offered for the truth</p> <p>12 of the matter? I think it is I'm going to sustain</p> <p>13 it.</p> <p>14 THE WITNESS: That was a short week, so</p> <p>09:41 15 that was about all that happened that week, I</p> <p>16 believe.</p> <p>17 We were also preparing -- we had a, for</p> <p>18 our facilities security clearance, we had our</p> <p>19 inspection scheduled for -- I believe the 9th.</p> <p>09:42 20 We had our representative for the Defense</p> <p>21 Security Service coming on the 9th, so I was</p> <p>22 preparing our facility security documents for that</p> <p>23 visit.</p> <p>24 BY MR. JAKOPIN:</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">44</p> <p>1 I called before I came to the office, and Dennis said</p> <p>2 he was going to be there when I got there.</p> <p>3 I asked if he was going to be in that day.</p> <p>4 He said, "I'll be there when you get there."</p> <p>09:43 5 When I got there, he was out in the</p> <p>6 warehouse with Mr. Trepp and a friend of Mr. Trepp's,</p> <p>7 yelling at him, obscenities, going through the</p> <p>8 warehouse out the back door, and he got in his truck</p> <p>9 and drove away.</p> <p>09:43 10 We spent the rest of that day meeting with</p> <p>11 Jay Dixon, explaining to him that we had major chaos</p> <p>12 going on and personnel problems, and he basically</p> <p>13 told us that we've got to go through a bunch of</p> <p>14 procedures for -- we also -- procedures for</p> <p>09:44 15 determining what happened.</p> <p>16 We also determined that possible -- it was</p> <p>17 possible that Dennis Montgomery had taken or shown</p> <p>18 some of our classified material to foreign nationals,</p> <p>19 so I started that investigation on what happened with</p> <p>09:44 20 that situation.</p> <p>21 MR. FLYNN: Your Honor, objection; move to</p> <p>22 strike, speculation.</p> <p>23 And can we have the identity of the people</p> <p>24 present? He keeps saying "we"</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>45</p> <p>1 There's been no foundation as to who was</p> <p>2 present on -- in any of these conversations or</p> <p>3 circumstances, and the last part of the testimony was</p> <p>4 just rank hearsay and speculation and lacks -- lacked</p> <p>09:44 5 foundation.</p> <p>6 THE COURT: Well, I think he's simply</p> <p>7 reciting events that took place to show what his</p> <p>8 conduct and state of mind were at the time. I'm</p> <p>9 going to overrule the objection</p> <p>09:44 10 It would be appropriate, however, to</p> <p>11 identify who the "we" is.</p> <p>12 THE WITNESS: The "we"? Do you want me to</p> <p>13 say it?</p> <p>14 THE COURT: Yeah.</p> <p>09:45 15 THE WITNESS: All the employees in the</p> <p>16 building, as a group.</p> <p>17 We were -- I'd say Jessie Anderson, Jim</p> <p>18 Bauder.</p> <p>19 I can list all the people that worked for</p> <p>09:45 20 the company. It was -- the whole company was going</p> <p>21 through the hard drives in our warehouse, going over</p> <p>22 video -- our -- we went to check our surveillance,</p> <p>23 Mr. Trepp and myself did that, check our surveillance</p> <p>24 video cameras, which had all been deleted</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>47</p> <p>1 A. The 10th was the morning when the chaos in</p> <p>2 the warehouse between him and Mr. Trepp was going on.</p> <p>3 Later on, I called -- Mr. Trepp asked me</p> <p>4 to call him to come back to the office to talk to us,</p> <p>09:46 5 and Dennis came back and he went into Dennis' --</p> <p>6 Warren's office and they talked privately.</p> <p>7 And then Dennis came over to my office and</p> <p>8 I asked him what was going on, and he said that</p> <p>9 Warren was trying to screw him out of money for</p> <p>09:47 10 years, he hadn't been paying him properly for his</p> <p>11 source code, and he said --</p> <p>12 I said, "What about this latest project we</p> <p>13 have, our" -- "this classified project that was of</p> <p>14 extreme importance?"</p> <p>09:47 15 And he said that if the company wanted it,</p> <p>16 they had to give him big money.</p> <p>17 And then he left and he never came back to</p> <p>18 the building since.</p> <p>19 Q. You had mentioned before that the company</p> <p>09:47 20 had a security system with cameras</p> <p>21 Could you describe that?</p> <p>22 A. We've got about 16 cameras in our</p> <p>23 building, and last summer we installed -- we</p> <p>24 originally had maybe 12. We installed different</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>46</p> <p>1 We noticed that on the 10th, as well.</p> <p>2 I can't remember all the -- Patty Gray</p> <p>3 wasn't there that day, or maybe -- no, she wasn't.</p> <p>4 Len Glogauer.</p> <p>09:45 5 Everybody in the building besides Patty</p> <p>6 Gray and Dennis Montgomery were there, all the</p> <p>7 employees, which I'm sure they can give you a list</p> <p>8 of. They were all present.</p> <p>9 THE COURT: All right. Are those names</p> <p>09:45 10 you've given us the ones you recall right now?</p> <p>11 THE WITNESS: Uh-huh.</p> <p>12 THE COURT: All right. Go ahead.</p> <p>13 BY MR. JAKOPIN:</p> <p>14 Q. Did you have any discussions with</p> <p>09:45 15 Mr. Montgomery on Monday the 9th?</p> <p>16 A. Other than he asked me -- I didn't call</p> <p>17 him over the weekend to go trap shooting like we</p> <p>18 usually do. I said I just wanted to relax after the</p> <p>19 trip. That was about it.</p> <p>-- 20 Q. Anything else that day?</p> <p>21 A. The 9th, no.</p> <p>22 The 10th, we did.</p> <p>23 Q. What happened on the 10th, in terms of</p> <p>24 conversations?</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>48</p> <p>1 cameras on the roof and we ran all the feeds for</p> <p>2 these cameras out to our warehouse area, the area</p> <p>3 where Dennis usually works, and we set up 16 work</p> <p>4 stations, one work station for each camera, and they</p> <p>09:47 5 digitally recorded all the footage coming off of</p> <p>6 these cameras.</p> <p>7 Dennis maintained it; I didn't. I had --</p> <p>8 my only involvement was originally setting up the</p> <p>9 hardware. After that, he maintained all the actual</p> <p>09:48 10 recording and maintenance of these machines. He and</p> <p>11 his son.</p> <p>12 I don't know, Jessie might have had some</p> <p>13 involvement. I don't know.</p> <p>14 Q. And you had mentioned that you and</p> <p>09:48 15 Mr. Trepp had gone and looked at what was stored on</p> <p>16 that video system?</p> <p>17 A. About noon on the 10th, we went and looked</p> <p>18 on the -- all of those hard drives for those</p> <p>19 recording machines had been cleaned off. The last</p> <p>09:48 20 modified date on the folders for recording was the --</p> <p>21 between 8:00 and 9:00 in the morning on the 9th, so</p> <p>22 for that -- for those modified dates, it means that</p> <p>23 those folders -- the last time something was on those</p> <p>24 folders was between 8:00 and 9:00 a.m. in the morning</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">49</p> <p>1 of January 9th.</p> <p>2 After that, it had been deleted off.</p> <p>3 Q. Does eTreppld have an alarm system?</p> <p>4 A. Yes, we do, maintained by ATD.</p> <p>09:48 5 Q. Could you describe that?</p> <p>6 A. We've only got -- I believe there was five</p> <p>7 codes for the alarm prior to the -- prior to this</p> <p>8 incident.</p> <p>9 Dennis had one, Warren had one, I had one,</p> <p>09:49 10 Patty had one, and I believe Jessie Anderson and Jim</p> <p>11 Bauder shared one; and only those people could turn</p> <p>12 off the alarm to come in the building at any time</p> <p>13 they wanted to.</p> <p>14 Barjinder Bal probably had one; I'm not</p> <p>09:49 15 sure.</p> <p>16 I had an old list of who had what alarm</p> <p>17 codes from 2002, so I don't know what the -- when we</p> <p>18 moved into the building, I don't know what had</p> <p>19 been -- changes made since then.</p> <p>09:49 20 Q. Can you tell by those codes who turned the</p> <p>21 alarm on and off?</p> <p>22 A. Each user, from my file, which is the</p> <p>23 November of 2002, that I got from Dennis, it had user</p> <p>24 numbers for each code.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">51</p> <p>1 lot -- we ran recovery software starting on the 10th</p> <p>2 to try to recover deleted files on everybody's</p> <p>3 machines.</p> <p>4 And all the programmers' work stations had</p> <p>09:51 5 a wipe and delete program, which is a program used to</p> <p>6 wipe off space on the hard drive. The military uses</p> <p>7 them to declassify hard drives. It wipes zeroes</p> <p>8 every space on the hard drives.</p> <p>9 So all of the programmers' machines had</p> <p>09:51 10 run -- had this wipe and delete program run on all of</p> <p>11 them, so nothing was able to be recovered from any of</p> <p>12 those.</p> <p>13 But I ran it on Dennis' personal work</p> <p>14 station and they had wipe and delete run on there but</p> <p>09:51 15 it hadn't wiped and deleted all the areas.</p> <p>16 The recycle bin area hadn't been wiped.</p> <p>17 It had been emptied but not wiped, and I recovered</p> <p>18 nine e-mail files from that that had been deleted on</p> <p>19 or before December 11th and 12th.</p> <p>09:52 20 Q. Did any of the other employees complain</p> <p>21 about their e-mail files that had been deleted?</p> <p>22 A. I had one programmer, Krishna Tangirala,</p> <p>23 complain that when I was gone, Dennis took his hard</p> <p>24 drive away and gave it back to him with just a clean</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">50</p> <p>1 So, for example, I think I was User</p> <p>2 No. 12, Dennis was User No. 13, and the ATD Alarm</p> <p>3 logs which we received shows what user number came in</p> <p>4 and what hours, which one set the alarm, which one</p> <p>09:50 5 turned the alarm off.</p> <p>6 Q. Could you tell -- is a report generated of</p> <p>7 those codes?</p> <p>8 A. Right. ATD keeps those and we get them by</p> <p>9 request.</p> <p>09:50 10 Q. Did you request a report for who was in</p> <p>11 and out of the building on the weekend of January 7th</p> <p>12 and 8th?</p> <p>13 A. Yes, we did. I requested it when I</p> <p>14 checked -- we reset the alarm codes on the building</p> <p>09:50 15 on the 10th. We had ATD come out and reset the codes</p> <p>16 and we added new codes for just a smaller group of</p> <p>17 people, and we also got the log and it showed the 7th</p> <p>18 and the 8th weekend, User No. 13, which is Dennis, is</p> <p>19 the only one that came in the building.</p> <p>09:50 20 Q. Let me ask you a few questions.</p> <p>21 You had talked about e-mails. Were there</p> <p>22 any e-mails that were deleted at the company?</p> <p>23 A. Well, I don't know about everybody, but I</p> <p>24 know in particular I ran recovery software on a</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">52</p> <p>1 slate hard drive, just the operating system.</p> <p>2 And I asked Dennis about that. This is</p> <p>3 the week of the 3rd to the 6th. I asked Dennis and</p> <p>4 he said that Krishna's machine had crashed and died.</p> <p>09:52 5 And I asked Krishna and he said that</p> <p>6 wasn't true. The computer was working fine; he just</p> <p>7 took his hard drive.</p> <p>8 MR. FLYNN: Objection; hearsay</p> <p>9 THE COURT: Sustained.</p> <p>09:52 10 MR. FLYNN: Objection, hearsay</p> <p>11 THE COURT: It's sustained.</p> <p>12 Ask another question</p> <p>13 MR. JAKOPIN: Fine, your Honor.</p> <p>14 BY MR. JAKOPIN:</p> <p>09:53 15 Q. Other than Krishna, did any other</p> <p>16 employees complain about e-mails having been deleted?</p> <p>17 MR. FLYNN: Objection; hearsay.</p> <p>18 THE COURT: I'm not sure I'm going to</p> <p>19 sustain that. I think this goes more to their state</p> <p>09:53 20 of mind and what they did afterwards than it does the</p> <p>21 truth of the matter</p> <p>22 I'll consider it only for the former as</p> <p>23 opposed to the latter</p> <p>24 Go ahead.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">53</p> <p>1 BY MR. JAKOPIN:</p> <p>2 Q. Answer the question</p> <p>3 A. They didn't delete -- I don't believe they</p> <p>4 complained about e-mails being deleted; they</p> <p>09:53 5 complained about source code on their machines being</p> <p>6 deleted.</p> <p>7 Q. Did you do any recovery for e-mails of</p> <p>8 anyone other than Mr. Montgomery's e-mails?</p> <p>9 A. E-mails, no.</p> <p>09:53 10 I only -- we tried recovery of all files</p> <p>11 deleted, not just e-mails. We tried to recover</p> <p>12 anything deleted.</p> <p>13 So we weren't just narrowing in on</p> <p>14 e-mails; we were trying to figure out what was</p> <p>09:53 15 deleted.</p> <p>16 We didn't know what was deleted overall,</p> <p>17 so we were trying to recover to determine what was</p> <p>18 deleted.</p> <p>19 MR. JAKOPIN: That's all I have.</p> <p>09:54 20 THE COURT: Cross?</p> <p>21</p> <p>22 CROSS EXAMINATION</p> <p>23 BY MR. FLYNN:</p> <p>24 Q. You testified about a conversation that</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">55</p> <p>1 Q. Okay. Now, so you agree with me, though,</p> <p>2 that in your Declaration, you used the singular</p> <p>3 eTreppid source code</p> <p>4 In your testimony here, you've been using</p> <p>09:55 5 the eTreppid source code in the singular.</p> <p>6 You agree with that?</p> <p>7 A. Right.</p> <p>8 Q. But what you really meant was</p> <p>9 collectively?</p> <p>09:55 10 A. Right.</p> <p>11 MR. JAKOPIN: Objection; argumentative.</p> <p>12 BY MR. FLYNN:</p> <p>13 Q. Is that correct?</p> <p>14 THE COURT: No, I think it's a question.</p> <p>09:55 15 It's not a statement.</p> <p>16 Go ahead, answer it.</p> <p>17 THE WITNESS: That's correct.</p> <p>18 BY MR. FLYNN:</p> <p>19 Q. Now, let's talk about what collectively</p> <p>09:55 20 means.</p> <p>21 When you first started working at</p> <p>22 eTreppid, describe actually what you were doing.</p> <p>23 A. I was programming the game engine that I</p> <p>24 had developed previous to working for eTreppid,</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">54</p> <p>1 you had with Mr. Montgomery about big money?</p> <p>2 A. Right.</p> <p>3 Q. And I believe you said that Mr. Montgomery</p> <p>4 said that unless the government gave him big money --</p> <p>09:54 5 something; is that correct?</p> <p>6 A. No.</p> <p>7 Q. No?</p> <p>8 A. He didn't mention the government.</p> <p>9 Q. Was it unless Mr. Trepp gave him big</p> <p>09:54 10 money?</p> <p>11 A. Mr. Trepp was the words he used.</p> <p>12 Q. And that conversation took place on</p> <p>13 January 10th?</p> <p>14 A. That's right. In my office.</p> <p>09:54 15 Q. Now, let's go back to the beginning of</p> <p>16 your employment.</p> <p>17 I've noticed in your Declaration and your</p> <p>18 testimony here, you keep using the singular eTreppid</p> <p>19 source code</p> <p>09:54 20 Are you aware of that?</p> <p>21 A. I call it the collective. It's multiple</p> <p>22 projects, multiple source code files, so eTreppid</p> <p>23 source code is probably more than a hundred different</p> <p>24 projects, thousands of files.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">56</p> <p>1 continuing developing on it.</p> <p>2 Dennis and Warren wanted me to possibly</p> <p>3 make it into a Kenny Rogers video game, The Gambler.</p> <p>4 We explored that route.</p> <p>09:56 5 We explored many different routes, but</p> <p>6 programming it.</p> <p>7 Q. How long did you work on that?</p> <p>8 A. Couple of years.</p> <p>9 Q. How many files would you estimate you</p> <p>09:56 10 created? Computer files?</p> <p>11 A. Couple thousand.</p> <p>12 Q. How many computer libraries would you</p> <p>13 estimate you --</p> <p>14 A. I'm including the libraries.</p> <p>09:56 15 When you compile source code, it generates</p> <p>16 libraries as intermediate files. You can also use</p> <p>17 those as final files, but I'm including those files,</p> <p>18 as well.</p> <p>19 Q. So can you characterize any of these files</p> <p>09:56 20 collectively as libraries? Or no?</p> <p>21 A. Libraries are part of a source code.</p> <p>22 They're pre- -- they're intermediate compiled file.</p> <p>23 Q. How many source codes were there for this</p> <p>24 video game technology?</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">57</p> <p>1 A. The actual C++ files is what you're</p> <p>2 referring to?</p> <p>3 Q. Explain to the Court what a C++ file is</p> <p>4 A. That's the actual -- when you're</p> <p>09:57 5 programming, you can program in various languages. I</p> <p>6 programmed in C++.</p> <p>7 They're basically text files. You can</p> <p>8 read them with just a regular notepad, even, and</p> <p>9 these compile to generate libraries as intermediate,</p> <p>09:57 10 and finally as an executable.</p> <p>11 So I -- you create the text -- these</p> <p>12 various text -- C++ text files, and I would say there</p> <p>13 were several hundred; maybe 800 in the game engine.</p> <p>14 Q. Eight hundred source codes just for the</p> <p>09:57 15 video technology that you worked for two years on?</p> <p>16 A. Correct.</p> <p>17 Q. And that takes us up to 2001?</p> <p>18 A. Into 2002.</p> <p>19 Q. And the --</p> <p>09:57 20 A. I mean, I still work on -- I'm still</p> <p>21 working on it regularly with one of our programmers,</p> <p>22 Michael Svatek.</p> <p>23 Q. Were there any other projects you worked</p> <p>24 on between the inception of your employment and</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">59</p> <p>1 during that two-year period that we're talking about?</p> <p>2 A. I don't recall.</p> <p>3 I worked on it with a couple of other</p> <p>4 programmers.</p> <p>09:58 5 Q. During this period of time, did you work</p> <p>6 on any other additional projects other than those</p> <p>7 two?</p> <p>8 A. Program-wise, no.</p> <p>9 Q. So during this two-year period,</p> <p>09:59 10 collectively, how many source codes did you create</p> <p>11 for eTreppid Technology?</p> <p>12 A. Just add up the ones we just talked about.</p> <p>13 Q. So how many? Roughly?</p> <p>14 A. Lines of code or files or what are you</p> <p>09:59 15 asking?</p> <p>16 Q. Well, let's deal with lines of code.</p> <p>17 A. A code isn't like some little simple card</p> <p>18 or something. It's not just one little bit of</p> <p>19 number. You wouldn't call that a code. You would</p> <p>09:59 20 call -- source code is what makes up a program.</p> <p>21 So to make up, like, say, for example,</p> <p>22 Windows Media Player, they have thousands -- 10, 20,</p> <p>23 40,000; who knows how many. You would call that</p> <p>24 collectively the source code that makes Windows Media</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">58</p> <p>1 throughout the time you were working on the video</p> <p>2 game project?</p> <p>3 A. The player that we used for the Intel Home</p> <p>4 Theater System.</p> <p>09:58 5 Q. And how many source codes did you create</p> <p>6 for that?</p> <p>7 A. I can't recall with that.</p> <p>8 There was not as many as the game engine,</p> <p>9 but a couple hundred.</p> <p>09:58 10 Q. How many lines of code were involved --</p> <p>11 are involved in the video game technology?</p> <p>12 A. Thousands.</p> <p>13 Q. Tens of thousands?</p> <p>14 A. Tens of thousands.</p> <p>09:58 15 Q. But you're not calling those source codes?</p> <p>16 Because that's not C++ coding?</p> <p>17 A. That is C++ coding.</p> <p>18 Q. So there were tens of thousands of source</p> <p>19 codes just for the video game technology?</p> <p>09:58 20 A. You wouldn't call that source code.</p> <p>21 Source code refers to the actual code to</p> <p>22 make up a program.</p> <p>23 Q. Okay And on this second project you were</p> <p>24 working on, how many lines of code did you create</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">60</p> <p>1 Player.</p> <p>2 Q. But there are, in fact, tens of thousands</p> <p>3 of codes? Lines of code?</p> <p>4 A. Lines of code is more accurate.</p> <p>10:00 5 Q. And collectively, to access those tens of</p> <p>6 thousands of lines of code, how much source coding</p> <p>7 would you need?</p> <p>8 A. Your question doesn't make much sense.</p> <p>9 Q. Does it all end up in an executable file?</p> <p>10:00 10 A. It all ends up in one file.</p> <p>11 Or possibly auxiliary DLL files, which are</p> <p>12 helper files, if you want to be simple about it.</p> <p>13 DLLs are like -- you would say Windows</p> <p>14 Media Player has one executable and maybe 10, 20</p> <p>10:00 15 additional files to make it run.</p> <p>16 Q. All right How many lines of code are</p> <p>17 involved in those two types of files? The helper</p> <p>18 file or the executable?</p> <p>19 A. Tens of thousands; 50,000, maybe a hundred</p> <p>10:00 20 thousand.</p> <p>21 For like the Windows Operating System,</p> <p>22 it's millions of lines of code.</p> <p>23 Q. So if we were dealing with something you</p> <p>24 want to call source code to access that --</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">61</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- how many actual lines of code would we</p> <p>3 be dealing with in that source code?</p> <p>4 A. For what, like the player I made for</p> <p>10:01 5 Intel?</p> <p>6 Q. Yeah</p> <p>7 A. That one had thousands of lines.</p> <p>8 The game engine that's, you know -- lines</p> <p>9 in there, I believe there's 50,000, probably, in all</p> <p>10 the various parts.</p> <p>11 Q. And what would you call those? Source</p> <p>12 codes?</p> <p>13 A. There's no codes, plural; it's code,</p> <p>14 singular.</p> <p>10:01 15 Q. But it involves tens of thousands of lines</p> <p>16 of code?</p> <p>17 A. Lines of code is the actual term.</p> <p>18 Q. Okay Now, where is that technology</p> <p>19 today?</p> <p>10:01 20 A. Which technology?</p> <p>21 Q. This technology for the video game?</p> <p>22 A. We have that. That hasn't been deleted.</p> <p>23 It's kept on my machine; my programmer,</p> <p>24 Michael Svatek's, machine; and also we have that</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">63</p> <p>1 distinction?</p> <p>2 A. -- one percent of the eTreppid source code</p> <p>3 is the game engine.</p> <p>4 Q. Thank you</p> <p>10:02 5 So if there are tens of thousands and that</p> <p>6 represents one percent, then the eTreppid source code</p> <p>7 involves millions and millions of lines of code, does</p> <p>8 it not?</p> <p>9 A. We don't have that much. The game engine</p> <p>10:03 10 is more complex than a lot of the other eTreppid</p> <p>11 stuff.</p> <p>12 I would say in the hundreds of thousands.</p> <p>13 Q. Are you able to draw on the blackboard an</p> <p>14 outline of the network structure, the infrastructure</p> <p>10:03 15 at eTreppid Technologies?</p> <p>16 A. Yes.</p> <p>17 Q. How the computer network was set up?</p> <p>18 A. Yes.</p> <p>19 MR. FLYNN: With the Court's permission,</p> <p>10:03 20 could we move the blackboard perhaps over here so the</p> <p>21 Court could see it?</p> <p>22 THE COURT: Yes.</p> <p>23 MR. FLYNN: And have the witness --</p> <p>24 BY MR. FLYNN:</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">62</p> <p>1 still on our SRCSERVER.</p> <p>2 That wasn't deleted.</p> <p>3 Q. So when you were giving your testimony on</p> <p>4 direct, when you said all these source codes --</p> <p>10:02 5 eTreppid source code was deleted --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- you weren't referring to two years of</p> <p>8 work and tens of thousands of lines of code, perhaps</p> <p>9 millions?</p> <p>10:02 10 A. Dennis has never had any involvement in</p> <p>11 doing the game engine.</p> <p>12 Q. Please, please, Mr. Venables.</p> <p>13 You were not referring, even though you</p> <p>14 used the singular, you were not referring to those</p> <p>10:02 15 tens of thousands of lines of code on the video game</p> <p>16 technology, were you?</p> <p>17 A. No.</p> <p>18 Q. And that is eTreppid source code, isn't</p> <p>19 it?</p> <p>10:02 20 A. That's some of the eTreppid source code.</p> <p>21 Q. But you didn't make that distinction, did</p> <p>22 you?</p> <p>23 A. We've got, I would say --</p> <p>24 Q. Please. Again, you didn't make that</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">64</p> <p>1 Q. Before we do that, did you have, in your</p> <p>2 home, a personal connection to all of the servers at</p> <p>3 eTreppid Technology?</p> <p>4 A. I had a dial-up VPN at my house, virtual</p> <p>10:04 5 private network.</p> <p>6 That lets me connect to the office through</p> <p>7 an encrypted tunnel so the passwords or anything else</p> <p>8 couldn't be spied on over the Internet, and I had set</p> <p>9 up that VPN in September of this past year so I can</p> <p>10:04 10 monitor our mail server on our WEBSERVER.</p> <p>11 Q. Why did you set that up?</p> <p>12 A. So I can monitor our mail servers and our</p> <p>13 WEBSERVER and our network status.</p> <p>14 Occasionally, our networks would go down</p> <p>10:04 15 and I wanted to make sure that -- Dennis wanted to</p> <p>16 make sure -- I wanted to make sure that they weren't</p> <p>17 going -- they weren't dying on us, and I can watch</p> <p>18 them from my house.</p> <p>19 That could only be connected to from my</p> <p>10:04 20 house.</p> <p>21 Q. Did anyone else have that capability?</p> <p>22 A. No.</p> <p>23 Patty Gray wanted it set up for her house</p> <p>24 in Phoenix, but we hadn't set that up yet.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">65</p> <p>1 Q. And so you -- what would you call it, a</p> <p>2 virtual private network?</p> <p>3 A. That's right.</p> <p>4 Q. Can you tell the Court whether you did</p> <p>10:05 5 this because after a certain date and time there</p> <p>6 seemed -- there began a period where there were tens</p> <p>7 of thousands of efforts to intrude into the eTreppid</p> <p>8 software?</p> <p>9 A. After, I believe, our first military</p> <p>10:05 10 contract was made public by some sort of press</p> <p>11 release by somebody in the military, our network was</p> <p>12 constantly under attack.</p> <p>13 So we beefed up our router system. I got</p> <p>14 a much stronger Cisco router, and I ran -- started</p> <p>10:05 15 running intrusion detection software to see who was</p> <p>16 trying to get into our network from the outside.</p> <p>17 Q. Now, many hits after the first -- can we</p> <p>18 call it a military contract?</p> <p>19 A. Right.</p> <p>10:05 20 Q. After the first military contract was made</p> <p>21 public, as you put it, how many hits began to appear</p> <p>22 per day?</p> <p>23 A. We were getting thousands a day, probably</p> <p>24 four or five thousand.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">67</p> <p>1 Q. All right.</p> <p>2 A. I was involved in --</p> <p>3 Q. You never had access to any of them?</p> <p>4 (Discussion off the record.)</p> <p>10:07 5 THE COURT: One at a time.</p> <p>6 MR. PEEK: Will he be allowed to finish</p> <p>7 his answer before --</p> <p>8 THE COURT: Yes, yes, yes.</p> <p>9 BY MR. FLYNN:</p> <p>10:07 10 Q. What's the answer to my question?</p> <p>11 THE COURT: Let him finish the last</p> <p>12 answer.</p> <p>13 THE WITNESS: Which part?</p> <p>14 THE COURT: Do you remember the question?</p> <p>10:07 15 BY MR. FLYNN:</p> <p>16 Q. Did you ever have access to any of the</p> <p>17 lines of code done by Mr. Montgomery on the secret</p> <p>18 government projects?</p> <p>19 A. I know what executables we delivered. I</p> <p>10:07 20 was involved with the delivery.</p> <p>21 The actual code to generate those</p> <p>22 executables, I haven't seen any of that.</p> <p>23 Q. You were never given access to them, were</p> <p>24 you?</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">66</p> <p>1 It's tapered off since, but initially</p> <p>2 there were a lot; 4- to 5,000 range.</p> <p>3 I keep a log. I have a log of all the</p> <p>4 inputs. It's been recording since that period.</p> <p>10:06 5 Q. And prior to that, how many hits per day</p> <p>6 were you getting? Prior to the military contract?</p> <p>7 A. We host various web sites, so including</p> <p>8 those, probably a couple hundred, maybe 500 a day.</p> <p>9 Q. So it went from 500 a day to 4- to</p> <p>10:06 10 5,000 --</p> <p>11 A. Thousand.</p> <p>12 Q. -- or more per day?</p> <p>13 A. Right.</p> <p>14 Q. Now, the first military contract, just in</p> <p>10:06 15 as few words as possible to give a description of it</p> <p>16 for the Court, how would you characterize it, just in</p> <p>17 terms of some type of a description?</p> <p>18 A. I don't have all the details about our</p> <p>19 contract. Warren and Dennis --</p> <p>10:07 20 Q. In fact, you never had access to any of</p> <p>21 the source codes or any of the government contracts,</p> <p>22 did you?</p> <p>23 A. I don't actually -- I know what programs</p> <p>24 we delivered to them.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">68</p> <p>1 A. Right.</p> <p>2 Q. Now, can we use the term, for the first</p> <p>3 military contract, facial recognition?</p> <p>4 A. I don't even know if that was it.</p> <p>10:08 5 I believe the first contract was more with</p> <p>6 the Predator. That's the public -- public --</p> <p>7 publicly known thing.</p> <p>8 Q. So you don't even know which one actually</p> <p>9 came first?</p> <p>10:08 10 A. Huh-uh. I have a --</p> <p>11 Q. Is it fair --</p> <p>12 Go ahead.</p> <p>13 A. I have an actual -- for part of our</p> <p>14 facility, military facility, I've got copies of</p> <p>10:08 15 the -- what's called DD Form 254, which is the</p> <p>16 military contract form.</p> <p>17 I have the copies of the original one of</p> <p>18 that, and the first one came from the Air Force.</p> <p>19 Q. So you were given -- because of the actual</p> <p>10:08 20 form in the contract, you were given some knowledge</p> <p>21 by someone at eTreppid about what the end result was</p> <p>22 of what Mr. Montgomery was doing; is that a fair</p> <p>23 characterization?</p> <p>24 A. Just overall, general, what it was about.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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1 Q. But you would never -- no one ever told
2 you specifically what he was doing?
3 A. No.
4 Q. All right. If we could have you create an
10:09 5 outline of the networking infrastructure at
6 eTreppid --
7 THE COURT: Is there something for him to
8 write with?
9 THE CLERK: I believe there's chalk up
10:09 10 there.
11 THE COURT: Okay. All right.
12 THE CLERK: Would they like to use the
13 paper or the chalkboard?
14 THE COURT: I prefer the paper, if we've
10:09 15 got some.
16 MR. FLYNN: The paper may be better for
17 your Honor, if you could just maintain custody of it.
18 THE COURT: I'm going to maintain custody
19 of it after it's filled out.
10:09 20 And we'll mark it --
21 MR. FLYNN: Thank you, your Honor.
22 THE COURT: -- as Exhibit 1.
23 Did you hear that, Greg?
24 THE CLERK: Yes.
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1 (Exhibit 1 was marked for identification.)
2 THE WITNESS: What exactly do you want me
3 to diagram?
4 Network structure is pretty open; we don't
10:10 5 have a lot of divisions.
6 (Discussion off the record.)
7 THE WITNESS: Our network structure is
8 fairly open. We don't have any subdivisions or
9 sub-networks on our network.
10:10 10 We have our main Internet, say, coming --
11 say this is the Internet coming into our main router,
12 which is Cisco router. In that router, I have a list
13 of fire wall instructions which prevents what can
14 come into the network.
10:10 15 I basically let everything go out; there's
16 no restriction on that.
17 After that, I have a series of switches
18 set up in a rack that all of the computers in the
19 buildings are set up to. I actually go through
10:10 20 another intermediate router before this, which does
21 our NAT, which is Network Address Translation.
22 So everybody on the Intel network is on a
23 private IP segment, so these machines can't even be
24 seen from the Internet except through one IP.
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1 This one IP is set up -- I don't even need
2 to tell you what it is, but it's one private IP
3 everybody's in the building, looks like, out on the
4 network, on the Internet. So if you're busy in a web
10:11 5 site, everybody in the building looks like just one
6 IP.
7 Then, every -- all the machines in the
8 building are plugged into this. That includes our
9 servers and all the work stations that all the
10:11 10 programmers use.
11 I had one other segment of network set up
12 out in the warehouse. These are the machines that
13 Dennis used regularly for doing some of his
14 classified projects.
10:11 15 Those were going through another machine.
16 That machine was the gateway to this network. There
17 weren't any restriction controls; this traffic was
18 two-way.
19 We were going to put another router here
10:11 20 in place of this computer because this computer was
21 not very reliable.
22 That's the basic structure.
23 BY MR. FLYNN:
24 Q. What would we call this?
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1 You said it's in the warehouse? This set
2 of machines that you said Dennis was working with?
3 A. Dennis called them the cluster. They were
4 a group of Windows XP work stations set up in -- at
10:12 5 various times, we had different amounts.
6 There's about five of these work stations
7 in each rack. Each one of these would be a rack
8 cabinet.
9 Q. And where was Dennis actually working in
10:12 10 connection with the cluster?
11 A. This was up in our -- our building is kind
12 of divided in two parts. The front section is
13 offices. This back section here is warehouse.
14 Dennis had set up a series of tables out
10:12 15 here that he worked on. He was regularly out here.
16 Q. Okay. And where did you work,
17 Mr. Venables?
18 A. Our server room was up in this area and my
19 office is right next to it.
10:12 20 So our servers were here and I was here.
21 Q. Okay. Could you just put the initials DM
22 down there.
23 And who worked in these work stations over
24 here in the warehouse, near Dennis?
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<p style="text-align: right;">73</p> <p>1 A. Just Dennis.</p> <p>2 Warren occasionally was out there working</p> <p>3 with him.</p> <p>4 Q. And no one else?</p> <p>10:13 5 A. Right.</p> <p>6 Q. Did you ever go out there and work on any</p> <p>7 of those work stations?</p> <p>8 A. Troubleshooting, helping him clone them to</p> <p>9 make more of them.</p> <p>10:13 10 Q. But actually creating lines of code --</p> <p>11 A. No.</p> <p>12 Q. -- did you ever do that?</p> <p>13 A. Never.</p> <p>14 Q. The answer was never, correct?</p> <p>10:13 15 A. Right.</p> <p>16 MR. FLYNN: Thank you, sir.</p> <p>17 You can resume the stand, please.</p> <p>18 THE COURT: Are there going to be any</p> <p>19 additions to this drawing?</p> <p>10:13 20 MR. FLYNN: I believe so. Mr. Montgomery</p> <p>21 will be --</p> <p>22 THE COURT: All right. We'll leave it up</p> <p>23 there, then, until we --</p> <p>24 BY MR. FLYNN:</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">75</p> <p>1 A. Generally Dennis was in charge of all the</p> <p>2 programmers in the building.</p> <p>3 Q. And who were -- can you give the identity</p> <p>4 of those programmers for the Court?</p> <p>10:14 5 A. Upstairs area or the downstairs area?</p> <p>6 Q. Upstairs first</p> <p>7 A. Upstairs, we had Barjinder Bal.</p> <p>8 I only remember his first name, Karthik.</p> <p>9 This is current; we've had people come and</p> <p>10:14 10 go over the years.</p> <p>11 Venkata Kalluri.</p> <p>12 Lalith Tenneti.</p> <p>13 Q. If I could just stop you there.</p> <p>14 Mr. Bals and Mr. Kalluri are the same</p> <p>10:14 15 people that have submitted Declarations in this case?</p> <p>16 A. Correct.</p> <p>17 Q. But they never worked with Dennis down in</p> <p>18 this other area you've got down below, either, did</p> <p>19 they?</p> <p>10:15 20 A. They were occasionally down there. I</p> <p>21 don't know for what.</p> <p>22 The upper area had glass windows so we</p> <p>23 could see who went down to that area, and I observed</p> <p>24 just about everybody in the building down there with</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">74</p> <p>1 Q. Where were the programmers actually</p> <p>2 working?</p> <p>3 I believe -- are these the work station</p> <p>4 that the programmers --</p> <p>10:13 5 A. Right.</p> <p>6 Q. -- were actually working?</p> <p>7 A. That section there that I have that top</p> <p>8 diagram on is actually a two-story area. The</p> <p>9 warehouse is all single-story.</p> <p>10:14 10 So some of them were on the second floor,</p> <p>11 some were on the first floor.</p> <p>12 Q. So, for example, on the video game, was</p> <p>13 that data compression-type technology?</p> <p>14 A. No, just 3-D rendering.</p> <p>10:14 15 Q. So eTreppid Technologies was doing</p> <p>16 software technology other than just data compression,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 MR. PEEK: Counsel, I can't see the</p> <p>10:14 20 witness</p> <p>21 Thank you</p> <p>22 BY MR. FLYNN:</p> <p>23 Q. And who was in charge of these programmers</p> <p>24 working over here?</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">76</p> <p>1 Dennis at one time or another.</p> <p>2 Q. But they never did any source code</p> <p>3 creation?</p> <p>4 A. For that project?</p> <p>10:15 5 Q. To your knowledge?</p> <p>6 A. I have no idea what they did for him.</p> <p>7 Q. Okay. And would you continue with the</p> <p>8 identity of the programmers, please.</p> <p>9 A. Just programmers, Michael Svatek; you got</p> <p>10:15 10 that one.</p> <p>11 Jessie Anderson.</p> <p>12 I believe that's all the programmers</p> <p>13 upstairs. There's other people, but those are the</p> <p>14 programmers.</p> <p>10:15 15 Q. All right. Now, so you've done -- during</p> <p>16 those first two years, did you do any work that we</p> <p>17 would call data compression-type work?</p> <p>18 A. No.</p> <p>19 Q. Do you know of anyone who did?</p> <p>10:16 20 A. Venkata did.</p> <p>21 Q. Anyone else?</p> <p>22 A. I'm sure others.</p> <p>23 I know him for sure; I've seen the</p> <p>24 programs he's worked on.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>77</p> <p>1 Q. During those first two years, what</p> <p>2 percentage of the company work, if you know, was data</p> <p>3 compression-type work?</p> <p>4 A. Initially, I believe that was the majority</p> <p>10:16 5 of what we were doing.</p> <p>6 Q. Have you ever seen any of the books or</p> <p>7 records of the company?</p> <p>8 A. No.</p> <p>9 Q. Have you ever seen any of the agreements</p> <p>10:18 10 between Mr. --</p> <p>11 A. No.</p> <p>12 Well, as far as records, I have the</p> <p>13 majority stockholder list as part of our facility</p> <p>14 security, I have that information.</p> <p>10:18 15 Q. In your office?</p> <p>16 A. Yes.</p> <p>17 Q. Describe those records, please.</p> <p>18 A. They show who the majority shareholders</p> <p>19 are.</p> <p>10:16 20 For getting your facility security</p> <p>21 clearance, you need to know if the company has any</p> <p>22 foreign interest in the company so that we could</p> <p>23 have -- foreign interest or influence, so the records</p> <p>24 show -- I believe it's Friendly Capital Partners,</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>79</p> <p>1 Q. That Mr. Milken is</p> <p>2 A. Oh, I don't know about that.</p> <p>3 Q. Are you aware of who Mr. Milken is?</p> <p>4 A. Yes.</p> <p>10:17 5 Q. In fact, he's -- have you ever</p> <p>6 participated in any discussions with Mr. Trepp about</p> <p>7 Michael Milken's involvement of eTreppid Technology</p> <p>8 and being a convicted felon?</p> <p>9 MR. JAKOPIN: Objection, your Honor.</p> <p>10:18 10 MR. FLYNN: If I can finish, your Honor.</p> <p>11 THE COURT: Yeah, let him finish the</p> <p>12 question. I don't know if it's objectionable or not</p> <p>13 until I hear it.</p> <p>14 BY MR. FLYNN:</p> <p>10:18 15 Q. In being a convicted felon, and that fact</p> <p>16 interfering with the government military contracts?</p> <p>17 THE COURT: Wait. Hold on just a second.</p> <p>18 Sit down, Counsel, just for a minute.</p> <p>19 All right.</p> <p>10:18 20 THE WITNESS: He's never talked to me</p> <p>21 about Mr. Milken.</p> <p>22 MR. PEEK: Mr. Venables, please.</p> <p>23 THE COURT: Now, go ahead and ask the</p> <p>24 question so I can --</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>78</p> <p>1 and --</p> <p>2 Q. That's Mr. Trepp, also, correct?</p> <p>3 A. Mr. Trepp represents Dennis and Brenda</p> <p>4 Montgomery, and I believe one other share -- there's</p> <p>10:17 5 three shareholders on this as the majority</p> <p>6 shareholders.</p> <p>7 Q. Is Wayne Primm one of those?</p> <p>8 A. He's not on the list.</p> <p>9 Q. Is Randy Halloway on that list?</p> <p>10:17 10 A. The list has Mr. Trepp personally,</p> <p>11 Mr. Trepp representing Friendly Capital, and Dennis</p> <p>12 and Brenda Montgomery.</p> <p>13 Those are the three main entities on the</p> <p>14 majority shareholders list.</p> <p>10:17 15 Q. Is Michael Milken in any of the records as</p> <p>16 being shown as a shareholder of eTreppid</p> <p>17 Technologies --</p> <p>18 A. Not that I know of.</p> <p>19 Q. -- that you have possession of?</p> <p>10:17 20 A. Not that I have, no.</p> <p>21 Q. Are you aware that Mr. Trepp has stated</p> <p>22 that he is a shareholder of eTreppid Technology?</p> <p>23 A. Yes.</p> <p>24 That Mr. Trepp is?</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>80</p> <p>1 BY MR. FLYNN:</p> <p>2 Q. Have you ever had any discussion with</p> <p>3 Mr. Trepp about Mr. Milken being a shareholder of</p> <p>4 eTreppid Technology, and that fact, because he is a</p> <p>10:18 5 convicted felon at the Drexel -- during the Drexel</p> <p>6 days --</p> <p>7 MR. PEEK: Your Honor, this is outrageous</p> <p>8 conduct. There's no question --</p> <p>9 BY MR. FLYNN:</p> <p>10:18 10 Q. -- of interfering with a government --</p> <p>11 THE COURT: Wait, wait. Wait a minute.</p> <p>12 MR. PEEK: Your Honor, there's only --</p> <p>13 THE COURT: Your co-counsel is handling</p> <p>14 this witness --</p> <p>10:18 15 MR. PEEK: Okay.</p> <p>16 THE COURT: -- so allow him to deal with</p> <p>17 this issue.</p> <p>18 MR. JAKOPIN: Objection, your Honor. He</p> <p>19 answered the question no.</p> <p>10:18 20 THE WITNESS: He's never talked to me</p> <p>21 about Mr. Milken; never.</p> <p>22 THE COURT: Well, I -- this is</p> <p>23 cross-examination. I don't know whether there's any</p> <p>24 relevance at all to this issue about the felony</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">81</p> <p>1 conviction</p> <p>2 I'm personally very well aware who</p> <p>3 Mr. Milken is, I know what his background is, and if</p> <p>4 we had a jury here, I'd be a little more worried</p> <p>10:19 5 about it, but we don't have a jury.</p> <p>6 I'm going to try to sort out what I think</p> <p>7 has something to do with this case, what doesn't, so</p> <p>8 I'm going to go ahead and let you go with that just a</p> <p>9 little bit, but I do want you to tie it in on a -- on</p> <p>10:19 10 relevance grounds.</p> <p>11 Maybe it has to do with security</p> <p>12 clearances.</p> <p>13 MR. FLYNN: It does, your Honor, and when</p> <p>14 Mr. Montgomery testifies, we'll go into it.</p> <p>10:19 15 BY MR. FLYNN:</p> <p>16 Q. In the books and records that you have, as</p> <p>17 I understand your testimony, you only show three</p> <p>18 shareholders?</p> <p>19 A. Three majority; that's all we require for</p> <p>10:19 20 our facility clearance.</p> <p>21 The government doesn't care about any</p> <p>22 minority shareholders, any lower than -- I forget the</p> <p>23 number; I think it's four percent.</p> <p>24 Anything lower than that, they don't care</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">83</p> <p>1 inspection to see what storage capabilities we had.</p> <p>2 Q. Did that clearance give eTrepid the right</p> <p>3 to store any classified material?</p> <p>4 A. We weren't given that final permission</p> <p>10:21 5 yet. It said that we could but we needed further</p> <p>6 inspection to inspect our storage containers, our</p> <p>7 safes.</p> <p>8 Q. So as of today's date, eTrepid has never</p> <p>9 been given a final security clearance to store</p> <p>10:21 10 classified material; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. And your explanation of the reason why is</p> <p>13 what again, Mr. Venables?</p> <p>14 A. The rules state that DSS, Defense Security</p> <p>10:21 15 Service, is in charge of granting that final storage</p> <p>16 clearance. They come and inspect what our entry and</p> <p>17 exit procedures for the building, our alarm code</p> <p>18 stuff, and also what storage containers we're using</p> <p>19 and how we maintain the procedures for entering and</p> <p>10:21 20 taking out classified material, which was part of</p> <p>21 that review on December 10th, that Jay Dixon came to</p> <p>22 start -- initiate.</p> <p>23 Q. All right. Let's go back to -- let's go</p> <p>24 back to the various technologies that you were</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">82</p> <p>1 about.</p> <p>2 Q. Did you ever have any conversations with</p> <p>3 anyone from the government about the identity of any</p> <p>4 of the shareholders of eTrepid Technology?</p> <p>10:20 5 A. They just wanted to know who the majority</p> <p>6 ones were.</p> <p>7 Q. And you gave them --</p> <p>8 A. Based on that, they granted us our</p> <p>9 facility clearance.</p> <p>10:20 10 Q. Okay. Explain to the Court what a</p> <p>11 facility clearance is</p> <p>12 A. Facility clearance is what we get as a</p> <p>13 collective after the key people in our company got</p> <p>14 their personal clearances.</p> <p>10:20 15 The key people that we've submitted were</p> <p>16 Dennis Montgomery, Warren Trepp, and myself as our</p> <p>17 facility security officer.</p> <p>18 After us three got our clearances, they</p> <p>19 reviewed who the shareholders were, and after that,</p> <p>10:20 20 what contract we had with the government -- you</p> <p>21 have -- to get a clearance, you have to have a</p> <p>22 contract that specifies compliance, and after that</p> <p>23 they granted us our facility clearance, meaning we</p> <p>24 can handle classified material after a further</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">84</p> <p>1 involved in, and I guess we're up to some time in</p> <p>2 2001, and we've got the video game technology,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>10:22 5 Q. And the other technology -- what did we</p> <p>6 call that, Mr. Venables?</p> <p>7 A. I forget the name of it. It was a media</p> <p>8 player for the Intel Home Theater System.</p> <p>9 Q. And what time in 2001 does that take us</p> <p>10:22 10 to?</p> <p>11 A. That was up until 2002 before we moved to</p> <p>12 our current building.</p> <p>13 We moved to our current building in August</p> <p>14 of 2002.</p> <p>10:22 15 Q. Okay. And what did you work on after</p> <p>16 these other technologies that you mentioned for</p> <p>17 eTrepid Technology?</p> <p>18 A. The building we moved into had no network</p> <p>19 infrastructure whatsoever. I worked on setting all</p> <p>10:22 20 that up, working with contractors to wire our</p> <p>21 building, setting up all the network stuff.</p> <p>22 We had nothing in that building, so I</p> <p>23 worked on that.</p> <p>24 Q. For how long?</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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1 A. It took about a year to get it to where it
2 is now.
3 Q. So during that year, did you have anything
4 to do with creating source coding for any codes for
10:23 5 eTreppid Technology?
6 A. On a regular basis, I dealt with Michael
7 and what he was doing, but other than that, no.
8 Q. Michael who?
9 A. Michael Svatek, working on the game
10:23 10 engine.
11 Q. So other than that, for another whole
12 year -- we're now up to when in 2002, would you say?
13 A. We're into 2003 by the time we finalize
14 our full network setup.
10:23 15 Beginning in 2003, I was involved with
16 doing all the purchasing and designing of the
17 hardware that he's got out there on that rack --
18 system of racks.
19 Q. So, again, no involvement with regard to
10:23 20 creating source coding for eTreppid Technologies?
21 A. No.
22 Q. Is there any time up to the present, since
23 your involvement in the video games, where you've
24 been involved in creating source code for eTreppid
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1 Technology?
2 A. Not since then, no.
3 Q. Do you have any knowledge as to what
4 percentage of the eTreppid business involved data
10:24 5 compression technology up until December of 2002?
6 A. I have no idea where the breakdown of
7 money came from.
8 Q. So you have no knowledge of even what was
9 paid for any of the projects eTreppid was working on?
10:24 10 A. No.
11 Q. Do you have any knowledge of how many
12 projects eTreppid was doing?
13 A. Total number, no.
14 I think Patty Gray, Dennis and Warren were
10:24 15 probably one the only ones -- the only three that
16 know all that.
17 Q. Let's call one technology data
18 compression.
19 You apparently never worked on any source
10:24 20 coding for data compression?
21 A. That's correct.
22 Q. We'll call the other one video compression
23 technology.
24 Is that basically the game? The video
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1 game?
2 A. No. Video compression is for playing back
3 video, such as a DVD or just a video file itself,
4 like, for example, compressing a DVD movie to fit
10:25 5 onto a CD.
6 Q. So you have no knowledge as to how much
7 source coding was done by eTreppid for video
8 compression technology; is that correct?
9 A. I've seen the various programmers and what
10:25 10 projects they're working on and --
11 Q. Do you --
12 A. -- I've dealt with that video compression
13 for the Intel Media Player.
14 Q. Do you know what percentage of the company
10:25 15 business that involved?
16 A. No idea.
17 Q. Do you know what percentage of the company
18 revenues that involved?
19 A. I have no idea.
10:25 20 Q. But again, you never created any source
21 coding yourself for that?
22 A. No.
23 Q. Did you ever have any access directly
24 where you looked at the source coding for video
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1 compression technology?
2 A. I had worked with one of the programmers
3 on the streaming of our video compressed video,
4 Lalith Tenneti, so I've seen some of the projects he
10:25 5 worked on.
6 And also with one of the prior employees,
7 Amit.
8 I forget Amit's last name.
9 I've seen some of the stuff, helping them
10:26 10 troubleshoot, compiling stuff.
11 Q. Do you know how many lines of source
12 coding there are at eTreppid for the video
13 compression technology?
14 A. I have no idea.
10:26 15 Q. Do you know how many lines of source
16 coding there are at eTreppid for the data compression
17 technology?
18 A. No.
19 Q. When you gave all this direct testimony
10:26 20 and you were doing this search with all of the other
21 employees, as you put it, did you go back and look
22 for source coding for data compression or video
23 compression technology?
24 A. We looked for all deleted files.
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<p>89</p> <p>1 Q. Did you look for any source coding for</p> <p>2 data compression technology?</p> <p>3 A. You can't do a search for deleted files by</p> <p>4 what kind of technology it is.</p> <p>10:26 5 Q. Is there any data compression technology</p> <p>6 source coding at eTreppid today, if you know?</p> <p>7 A. I don't know what files we've recovered.</p> <p>8 We're still in the process of recovering</p> <p>9 deleted files; we haven't gone through them all.</p> <p>10:27 10 Q. So you could -- as you sit here today,</p> <p>11 there could be tens of thousands of source codes --</p> <p>12 MR. JAKOPIN: Objection.</p> <p>13 BY MR. FLYNN:</p> <p>14 Q. -- for data compression technology in the</p> <p>10:27 15 computers at eTreppid that you haven't even checked</p> <p>16 yet; is that correct?</p> <p>17 MR. JAKOPIN: Objection; using "source</p> <p>18 codes" is improper, foundation.</p> <p>19 THE COURT: I'm not sure I understand the</p> <p>10:27 20 objection.</p> <p>21 THE WITNESS: He keeps using the term</p> <p>22 wrong.</p> <p>23 THE COURT: All right. Rephrase your</p> <p>24 question and then we'll go from there.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>91</p> <p>1 I'm not sure that I have the understanding</p> <p>2 yet to make a determination as to whether or not it's</p> <p>3 confusing. I'm not sure that that's an objection</p> <p>4 that I would sustain, anyway</p> <p>10:28 5 So I'm going to allow this testimony for</p> <p>6 whatever it's worth so it helps me get educated about</p> <p>7 what the issues in this case are.</p> <p>8 I'm beginning to see that there's an issue</p> <p>9 between source code, singular, source code, plural,</p> <p>10:28 10 and whether we're talking about lines of source code</p> <p>11 and lines of data codes, as opposed to separate</p> <p>12 codes, but I want to learn a little bit more about</p> <p>13 this, and so allowing me to listen to this helps me</p> <p>14 to do that.</p> <p>10:29 15 So if you'd indulge me a little bit,</p> <p>16 please, I'd like to hear a little more about this.</p> <p>17 BY MR. FLYNN:</p> <p>18 Q. Mr. Venables, we've established that there</p> <p>19 are, I think as you put it, hundreds of source codes</p> <p>10:29 20 for the video game technology that you worked on that</p> <p>21 are still at eTreppid; is that correct?</p> <p>22 A. We've recovered hundreds of files that</p> <p>23 were deleted. What the contents of those files or</p> <p>24 what -- if there's actually any codes, we know that</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>90</p> <p>1 BY MR. FLYNN:</p> <p>2 Q. In the computers, as you sit here today,</p> <p>3 at eTreppid Technology, is there source coding for</p> <p>4 data compression technology?</p> <p>10:27 5 A. I have no idea what we've recovered.</p> <p>6 Q. You don't know?</p> <p>7 A. It could be.</p> <p>8 We haven't gone through it all. We've</p> <p>9 actually -- working with law enforcement officials,</p> <p>10:27 10 they don't want us to tamper with any more of the</p> <p>11 evidence of trying to recover this.</p> <p>12 Q. So as you sit here today, since you</p> <p>13 haven't gone through it all, there could be tens of</p> <p>14 thousands of source codes for data compression</p> <p>10:28 15 technology alone on the eTreppid computers; is that</p> <p>16 correct?</p> <p>17 A. That doesn't really make sense.</p> <p>18 MR. JAKOPIN: Objection; confusing.</p> <p>19 THE WITNESS: That doesn't really make</p> <p>10:28 20 sense --</p> <p>21 THE COURT: Well, I'm not sure --</p> <p>22 THE WITNESS: -- what you're saying, but</p> <p>23 maybe you can clarify it.</p> <p>24 THE COURT: Hold on. Stop. Stop</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>92</p> <p>1 some files have zero contents because they were wiped</p> <p>2 clean.</p> <p>3 So there's a file name but zero code is</p> <p>4 within that file.</p> <p>10:29 5 Q. We're just talking about the video game</p> <p>6 now.</p> <p>7 A. The video game?</p> <p>8 Q. Yeah, just the video game.</p> <p>9 A. We haven't --</p> <p>10:29 10 Q. Are there hundreds of source codes just on</p> <p>11 the video game, as you testified before, that are</p> <p>12 still on the eTreppid --</p> <p>13 A. That's like saying there's hundreds of</p> <p>14 tomatoes in the video game.</p> <p>10:29 15 What you're saying doesn't make any sense</p> <p>16 in any way.</p> <p>17 THE COURT: Well, hold on just a second.</p> <p>18 THE WITNESS: We have all --</p> <p>19 THE COURT: Stop.</p> <p>10:30 20 THE WITNESS: -- the video --</p> <p>21 THE COURT: Stop.</p> <p>22 THE WITNESS: -- game files.</p> <p>23 THE COURT: When I say hold on, I mean</p> <p>24 stop</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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1 You got it?

2 THE WITNESS: Okay.

3 THE COURT: All right. What I would like

4 both of you to do is to try to allow the other one to

10:30 5 finish. This is not like normal conversation.

6 We've got a court reporter here that's got

7 to get down what's being said, and I know that it's

8 not an easy thing to do if you're not used to it.

9 So, please, if he's asking a question, let

10:30 10 him finish it. If he's making an answer, let him

11 finish it.

12 And I'm sorry for the interruption, but I

13 just want to try to deal with this issue right now.

14 So go ahead, please.

10:30 15 MR. FLYNN: Thank you, your Honor.

16 BY MR. FLYNN:

17 Q. Mr. Venables, let's try it this way.

18 You say you have found deleted files of

19 source code; is that correct?

10:30 20 A. Correct.

21 Q. Have you found deleted files of source

22 code on your video game technology?

23 A. I said in the beginning, those files were

24 never deleted.

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1 Q. Thank you.

2 Have you found deleted files of source

3 code on data compression technology?

4 A. I have found deleted folders for a program

10:31 5 called ET Adaptive, which I believe is the data

6 compression program.

7 Q. What makes you believe that?

8 A. Because I asked the programmer, Venka, who

9 was working on it what it's used for and he said data

10:31 10 compression.

11 Q. And when you say you found deleted files,

12 you found files -- you saw something that showed you

13 that the files were once there and now they're not

14 there? Or did you recover them?

10:31 15 A. Some locations, we didn't recover them.

16 Like the programmers' machines, they

17 recovered file names but zero contents in the files.

18 On the server, I've recovered the folders

19 and some of the files but not all of the files.

10:32 20 Q. Okay. On video compression technology

21 software, have you found any files at eTreppid -- on

22 eTreppid computers that were never deleted?

23 A. No.

24 Q. Have you looked?

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1 A. We've looked all over. We looked on every

2 machine in the building.

3 Q. For video compression?

4 A. By video compression, I assume that you're

10:32 5 talking about the video Codec that we use.

6 There's various names for it. ETVC is one

7 of them. ERVP is another one. I don't remember all

8 of them, but we haven't found any of those on

9 anybody's work stations or the server.

10:32 10 Q. Have you made any effort to recover those

11 files?

12 A. Yes, I have.

13 Q. What did you do?

14 A. From the SRCSEVER, we're running the

10:32 15 program made by Executive Software called Emergency

16 Undelete. It's made for recovering deleted files.

17 Q. And have you recovered any of them?

18 A. I've got some folders with the names of

19 the video Codecs.

10:33 20 We haven't gone through all of them yet.

21 It's still running. It takes weeks and weeks to

22 piece these pieces together.

23 Q. That's how I understand it.

24 How many files have you recovered to date

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1 and how long -- how many files have you recovered to

2 date on the video compression technology?

3 A. I have no idea. I just have a total

4 number of gigabytes that I've recovered.

10:33 5 Q. What is that?

6 A. About 40 to 50 gigabytes have been

7 recovered.

8 Q. How long has that recovery program been

9 running?

10:33 10 A. Since January 12th.

11 Q. And how long will it -- it will take weeks

12 longer to continue to run it to recover files; is

13 that correct?

14 A. By the current rate, probably.

10:33 15 Q. Okay. And is that technology, the

16 recovery technology going to enable you to recover

17 all of the source codes on the video compression

18 technology?

19 A. I have no idea.

10:34 20 Q. You don't know?

21 A. No.

22 Q. How many source codes, what you describe

23 as source codes have you recovered to date on the

24 video compression technology?

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<p style="text-align: right;">97</p> <p>1 A. I have no idea.</p> <p>2 I just have the recovered folders and</p> <p>3 files, and nobody has access to it right now. It's</p> <p>4 not even plugged into our network.</p> <p>10:34 5 Q. Why not?</p> <p>6 A. We don't want to corrupt anything. We</p> <p>7 want to preserve the state that it was in at the</p> <p>8 point of deletion.</p> <p>9 Q. Just yes or no.</p> <p>10:34 10 Did you ever have a conversation with</p> <p>11 Mr. Trepp instructing you to go into Mr. Montgomery's</p> <p>12 work station and try to recover classified</p> <p>13 information or classified source codes?</p> <p>14 A. He asked me to recover what files I could</p> <p>10:34 15 find, in particular the e-mail files which I did</p> <p>16 recover.</p> <p>17 Q. What did you do to try to recover?</p> <p>18 A. I ran the same program I already talked</p> <p>19 about, Emergency Undelete.</p> <p>10:35 20 Q. And just yes or no.</p> <p>21 Did you ever have a conversation with</p> <p>22 Mr. Montgomery about a certain governmental agency</p> <p>23 requiring intrusion devices on all of the equipment</p> <p>24 Mr. Montgomery was working on?</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">99</p> <p>1 A. To my knowledge and others in the building</p> <p>2 that I've consulted: Jessie Anderson, Lalith</p> <p>3 Tenneti.</p> <p>4 Q. Let's talk about audio compression</p> <p>10:36 5 technology.</p> <p>6 Did eTrepid do audio compression</p> <p>7 technology?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any knowledge of what</p> <p>10:36 10 percentage of the business was audio compression</p> <p>11 technology?</p> <p>12 A. I have no idea.</p> <p>13 Q. And I take it you don't know what kind of</p> <p>14 revenue the audio compression technology generated?</p> <p>10:37 15 A. No.</p> <p>16 Q. Did you ever do work on audio compression</p> <p>17 technology?</p> <p>18 A. No.</p> <p>19 Q. In the last several weeks, have you made</p> <p>10:37 20 an effort to examine the computers of eTrepid to</p> <p>21 determine whether any audio compression technology</p> <p>22 software files are present or not present?</p> <p>23 A. We've looked for what we call ETAC,</p> <p>24 eTrepid Audio Codec or compression, and none of our</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">98</p> <p>1 A. Never.</p> <p>2 Q. Do you know what an intrusion device is?</p> <p>3 A. Yes. I've got one on our Cisco router.</p> <p>4 Q. What is an intrusion device?</p> <p>10:35 5 A. It detects if somebody is trying to get</p> <p>6 into the thing, and it will usually log it; try to</p> <p>7 block it and log it.</p> <p>8 Q. Does -- so as I understand it, you have no</p> <p>9 knowledge of whatever governmental interaction</p> <p>10:35 10 Mr. Montgomery had to establish intrusion devices</p> <p>11 that would self-destruct any information on</p> <p>12 Mr. Montgomery's equipment?</p> <p>13 A. I have no knowledge of any of his</p> <p>14 interactions.</p> <p>10:36 15 I know what's on all the machines in the</p> <p>16 building.</p> <p>17 Q. Do you know whether or not there is an</p> <p>18 intrusion device on Mr. Montgomery's workplace --</p> <p>19 A. No, there's no such --</p> <p>10:36 20 Q. -- computers, that if anyone tries to</p> <p>21 access without certain codes, self-destructs all the</p> <p>22 material in the computers?</p> <p>23 A. There's no such thing.</p> <p>24 Q. To your knowledge?</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">100</p> <p>1 programmers' work stations, none of the machines out</p> <p>2 in the warehouse have it.</p> <p>3 I believe I've recovered a folder or two</p> <p>4 from SRCSERVER, but I don't know what the contents</p> <p>10:37 5 are.</p> <p>6 Q. Are you running any recovery technology</p> <p>7 for any audio compression software?</p> <p>8 A. We're recovering any and all files that we</p> <p>9 can find on SRCSERVER that have been deleted.</p> <p>10:38 10 It doesn't look for any particular kind of</p> <p>11 file; it just looks for any deleted files.</p> <p>12 Q. So has any -- have any source code files</p> <p>13 been recovered, if you know, in audio compression</p> <p>14 technology software?</p> <p>10:38 15 A. There's a couple of folders that are for</p> <p>16 ETAC.</p> <p>17 Q. Okay. And that's currently on the</p> <p>18 company's premises?</p> <p>19 A. Yes.</p> <p>10:38 20 Q. Now, I'm just going to use three different</p> <p>21 descriptive terms and I'll just ask you some</p> <p>22 yes-or-no questions. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. Object tracking.</p> <p style="text-align: right;">LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>101</p> <p>1 Do you know, yes or no, whether eTrepid 2 Technologies has any government contracts with regard 3 to object tracking? 4 A. Yes. 10:38 5 Q. Have you ever done any computer 6 programming on object tracking? 7 A. No. 8 Q. Have you ever had access to any of the 9 source codes for object tracking? 10:39 10 A. No. 11 Q. Who at eTrepid has had access to the 12 source codes for object tracking? 13 A. A person I mentioned before, Krishna. 14 Zehang Sun is working on it with a team of 10:39 15 people downstairs, in our downstairs area which I 16 haven't mentioned yet. We have another ten people 17 down there. All of them -- not all of them, but a 18 majority of them are working on that stuff. 19 Q. Under Mr. Montgomery's supervision? 10:39 20 A. Yes. 21 Q. And is it true to say that each of these 22 individuals has only had bits and pieces, and only 23 Mr. Montgomery has the full picture of what's being 24 worked on? LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>103</p> <p>1 per day? 2 A. I have no idea what the -- a lot of it is 3 editing pre-existing lines, not generating new lines. 4 So I would say the majority of the days 10:41 5 are spent on tweaking and modifying existing lines. 6 Q. I'm going to use another descriptive term, 7 and I'll just ask for yes or no. 8 To your knowledge, did eTrepid Technology 9 have any classified government contracts with regard 10:41 10 to pattern recognition technology? 11 A. We only have one classified contract, to 12 my knowledge, and that's -- that's in our file on 13 record. 14 Q. So you don't even -- do you know what 10:41 15 pattern recognition technology is? Yes or no? 16 A. Yes. 17 Q. And to your knowledge, you don't even -- 18 you have no awareness, as you sit here today, of what 19 eTrepid was doing on pattern recognition? 10:41 20 A. I have bits and pieces of what I've seen 21 going on in the building, but I don't have the full 22 picture. 23 Q. Do you have any idea how many source codes 24 have ever existed on pattern recognition technology? LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>102</p> <p>1 A. I have no idea how he delegated. 2 Q. That's all classified; is that correct? 3 A. How he delegates isn't classified; only 4 the classified material. 10:40 5 Q. The work being done is all classified? 6 A. They can work on all kinds of program, but 7 the classified material which we receive from the 8 government agency is classified. 9 So they can program on whatever they want, 10:40 10 but they can't handle -- they can't see classified 11 material because none of them have clearances. 12 Q. Only Mr. Montgomery? 13 A. Correct. 14 Well, we have -- six people have 10:40 15 clearances in the building. 16 Q. So to your knowledge, were they doing line 17 coding? 18 A. Yes, they were. 19 Q. Bits and pieces? 10:40 20 A. They were working on whatever; I have no 21 idea what they were doing exactly. 22 Q. On average, how many codes can a 23 programmer do a day? 24 How many line codes could a programmer do LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>104</p> <p>1 A. No, I have no idea. 2 Q. Do you have any idea where any of those 3 source codes could ever be found anywhere? 4 A. Well, if we go by what Dennis told me, all 10:42 5 the source code is on SRCSERVER. I know what the 6 contents of the SRCSERVER were by file, number of 7 files, and total file size. 8 Q. So this is just based on what 9 Mr. Montgomery told you? 10:42 10 A. Right. 11 If he said it's not there, if he's saying 12 it's not there, then I would have no idea. 13 Q. Have you ever seen any of the contracts 14 Mr. Trepp and Mr. Montgomery signed with a certain 10:42 15 governmental agency with regard to either object 16 tracking or pattern recognition technology? 17 A. If you're talking about special access 18 program stuff, no, I don't have any knowledge of it. 19 Q. So you have no knowledge of the terms of 10:43 20 any of those contracts? 21 A. No. 22 Q. And with regard to Mr. Montgomery's 23 supervision techniques of the people working under 24 him, the programmers, you have no knowledge of what LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>105</p> <p>1 he was allowed to share and what he was not allowed</p> <p>2 to share in order to get the work done; is that</p> <p>3 correct?</p> <p>4 A. I have no idea.</p> <p>10:43 5 Q. I'm going to use another term, and just</p> <p>6 answer yes or no, please</p> <p>7 Facial recognition technology. Have you</p> <p>8 ever heard that term at eTrepid Technologies?</p> <p>9 A. Yes. I've seen the work in progress being</p> <p>10:43 10 done by the people downstairs.</p> <p>11 Q. Have you ever seen the source codes for</p> <p>12 facial recognition technology?</p> <p>13 A. No, I haven't.</p> <p>14 Q. Who was the individual at eTrepid that</p> <p>10:43 15 was doing the work on facial recognition technology?</p> <p>16 A. Zehang Sun's team. He has a team of</p> <p>17 people working underneath him.</p> <p>18 Q. Under the supervision of Mr. Montgomery?</p> <p>19 A. Right.</p> <p>10:44 20 Q. And have you, in any recovery program</p> <p>21 you've been implementing, made an effort to recover</p> <p>22 any source codes for facial recognition technology?</p> <p>23 A. As I said, we're not looking for any -- we</p> <p>24 can't look by any particular technology, just by</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>107</p> <p>1 A. Mr. Montgomery had me make a program that</p> <p>2 would delete all the hard drives in all the computers</p> <p>3 we gave back to them.</p> <p>4 Q. So it's your testimony today that all</p> <p>10:45 5 those source codes at eTrepid were taken by the</p> <p>6 government?</p> <p>7 A. No. We ran Active Kill, I believe that</p> <p>8 one was called. It's a DOD certified program for</p> <p>9 wiping all those hard drives.</p> <p>10:45 10 Those were all given back clean slate.</p> <p>11 Q. So what was left?</p> <p>12 THE COURT: Is this a good time to take a</p> <p>13 little break?</p> <p>14 MR. FLYNN: Sure.</p> <p>10:45 15 THE COURT: We've been going not quite two</p> <p>16 hours.</p> <p>17 MR. FLYNN: Just one question, your Honor?</p> <p>18 THE COURT: Sure. Go ahead.</p> <p>19 BY MR. FLYNN:</p> <p>10:45 20 Q. So to your knowledge, what is left at</p> <p>21 eTrepid with regard to the source codes for that</p> <p>22 technology that was wiped out?</p> <p>23 A. I have no idea what source code was used</p> <p>24 for that project.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>106</p> <p>1 file, deleted file.</p> <p>2 Q. So you just went on all of</p> <p>3 Mr. Montgomery's computers, some of which are, in</p> <p>4 fact, a certain governmental agency's computers; is</p> <p>10:44 5 that correct?</p> <p>6 MR. PEEK: Counsel, I can't see the</p> <p>7 witness.</p> <p>8 THE WITNESS: None of those machines out</p> <p>9 there have been certified for classified material, if</p> <p>10:44 10 that's what you're asking.</p> <p>11 BY MR. FLYNN:</p> <p>12 Q. As you sit here today, are you aware that</p> <p>13 a certain governmental agency brought in computers?</p> <p>14 A. Yes.</p> <p>10:44 15 Q. Have you attempted to access those</p> <p>16 computers?</p> <p>17 A. They took those computers back away.</p> <p>18 Q. When did they do that?</p> <p>19 A. Last year sometime, I believe. Last</p> <p>10:45 20 spring.</p> <p>21 Q. And they took the source codes with them?</p> <p>22 A. I don't believe so. They just took</p> <p>23 hardware.</p> <p>24 Q. Were the source codes on the hardware?</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>108</p> <p>1 MR. FLYNN: Thank you, your Honor.</p> <p>2 THE COURT: All right. Let's be in recess</p> <p>3 until -- let's make it five after 11:00.</p> <p>4 (Recess taken.)</p> <p>11:04 5 THE COURT: Please be seated.</p> <p>6 MR. FLYNN: Thank you, your Honor.</p> <p>7 THE COURT: Oh, by the way, before you</p> <p>8 start, I do have an order permitting you to practice.</p> <p>9 I'll file that in with the clerk.</p> <p>11:04 10 And then when you conform the copies, give</p> <p>11 them the copies, too, please.</p> <p>12 MR. FLYNN: Thank, your Honor. It's nice</p> <p>13 to be legal for a change.</p> <p>14 THE COURT: Doesn't hurt.</p> <p>11:04 15 Go ahead.</p> <p>16 BY MR. FLYNN:</p> <p>17 Q. Mr. Venables, how many hard drives are</p> <p>18 there at eTrepid Technology?</p> <p>19 A. I don't know. I -- since I purchased them</p> <p>11:05 20 all, I should know an accurate number, but we've</p> <p>21 bought many, many hundreds.</p> <p>22 I would say, total, we probably have about</p> <p>23 a thousand, but no more than 2000.</p> <p>24 Q. Hard drives?</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>109</p> <p>1 A. Yeah. Correct.</p> <p>2 Q. How many files are on those hard drives?</p> <p>3 A. We've got --</p> <p>4 Q. Your best estimate?</p> <p>11:05 5 A. We've got plenty that only have a couple</p> <p>6 of files in them in our file cabinets in the</p> <p>7 warehouse.</p> <p>8 Q. Collectively, how many would you estimate?</p> <p>9 Or can you?</p> <p>11:05 10 A. I can't estimate.</p> <p>11 Q. How many computers do you have at eTreppid</p> <p>12 Technology?</p> <p>13 A. On my network, I have less than a hundred,</p> <p>14 but we've got plenty of other ones that are not in</p> <p>11:05 15 use or --</p> <p>16 Say, total, 200 or less computers.</p> <p>17 Q. If I suggested to you there were over</p> <p>18 150 million files on eTreppid Technology computers,</p> <p>19 would you disagree?</p> <p>11:08 20 A. No.</p> <p>21 Q. But you don't know?</p> <p>22 A. I would say --</p> <p>23 Q. You can't give us your best estimate?</p> <p>24 A. Since I've seen a lot of the files we've</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>111</p> <p>1 code and those aren't deleted.</p> <p>2 Q. Now, perhaps it was an oversight of mine,</p> <p>3 but as I understand it, there is a fairly significant</p> <p>4 little structure right there on eTreppid premises, is</p> <p>11:07 5 there not?</p> <p>6 A. In the downstairs -- center of the</p> <p>7 downstairs area, our little private room?</p> <p>8 Q. Yes</p> <p>9 Could you -- would you indulge me and put</p> <p>11:07 10 it where you think it should go, the private room?</p> <p>11 A. It's underneath -- say this is the rest of</p> <p>12 the building here; it's about located center</p> <p>13 downstairs.</p> <p>14 Q. Have you ever been in the private room?</p> <p>11:08 15 A. Yes.</p> <p>16 Q. How many times?</p> <p>17 A. In the past two weeks, I've spent a lot of</p> <p>18 time there.</p> <p>19 Q. Before the past two weeks, how many times</p> <p>11:08 20 were you in the private room?</p> <p>21 A. Very little.</p> <p>22 Q. Who had access to the private room at</p> <p>23 eTreppid?</p> <p>24 A. Warren and Dennis and Patty and some</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>110</p> <p>1 been going over the last couple of weeks on most of</p> <p>2 these hard drives in the warehouse and what have you,</p> <p>3 a lot of them have individual frames of video, so a</p> <p>4 single frame for every second, or less than 30 frames</p> <p>11:06 5 a second they were recorded at, so your number of a</p> <p>6 million or more would be accurate because it contains</p> <p>7 a lot of these video frames.</p> <p>8 Q. Well, 150 million?</p> <p>9 A. Right. That's --</p> <p>11:06 10 Q. How many of the 150 million have you</p> <p>11 checked to date?</p> <p>12 A. In the past two weeks, since the 10th,</p> <p>13 I've looked at just about every hard drive in the</p> <p>14 building.</p> <p>11:07 15 Q. How many files have you checked to date,</p> <p>16 of the 150 million?</p> <p>17 A. I haven't opened every single file. I'd</p> <p>18 say I'd open a folder and it has like a thousand</p> <p>19 frames of something, I'll just look at the first one</p> <p>11:07 20 and then go to something else.</p> <p>21 Q. So of the 150 million files, can you tell</p> <p>22 the Court today how many are still on the eTreppid</p> <p>23 computers that have never been deleted?</p> <p>24 A. I'd say about 80 percent are not source</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>112</p> <p>1 outside government people.</p> <p>2 Q. Just if you can give me a number, how many</p> <p>3 of those outside government people that had access to</p> <p>4 the private room have you ever dealt with?</p> <p>11:08 5 A. I dealt with two of them a lot recently,</p> <p>6 and I've dealt with them in the past.</p> <p>7 Other than that, we had some with the</p> <p>8 special access program. I dealt with all of them</p> <p>9 regularly.</p> <p>11:09 10 I had to know who they were coming and</p> <p>11 going out of the building. They can't just get to</p> <p>12 that room without coming through our -- one of our</p> <p>13 outside doors.</p> <p>14 Q. These government people you've dealt with</p> <p>11:09 15 in the last two weeks, who contacted them?</p> <p>16 Did you?</p> <p>17 A. No.</p> <p>18 Q. Who at eTreppid do you know contacted</p> <p>19 them?</p> <p>11:09 20 A. Jay Dixon actually is the guy with DSL. I</p> <p>21 brought him in there.</p> <p>22 But outside that, there are government</p> <p>23 people that Warren contacted.</p> <p>24 Q. Who --</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>113</p> <p>1 Strike that</p> <p>2 You personally contacted Jay Dixon?</p> <p>3 A. Well, it was -- we're on a regular contact</p> <p>4 basis since he's our representative with our facility</p> <p>11:09 5 clearance.</p> <p>6 Q. What is in the private room?</p> <p>7 A. A couple of tables, a couple of computers,</p> <p>8 and a couple of secure containers; safes.</p> <p>9 Q. And have you made an effort in the last</p> <p>11:10 10 several weeks to access those computers?</p> <p>11 A. The -- one of them wasn't even plugged in.</p> <p>12 The other one was running and I saw what</p> <p>13 was on it.</p> <p>14 Q. What was on it? Just in terms of a</p> <p>11:10 15 general description?</p> <p>16 A. Basically just operating system and</p> <p>17 Microsoft Office and access to the Internet; nothing</p> <p>18 else.</p> <p>19 Q. Okay. Did you make any effort to access</p> <p>11:10 20 any of the files on either of these two computers?</p> <p>21 A. No. I just saw what was on them.</p> <p>22 I connected one of them to the Internet.</p> <p>23 Q. Did you bring Mr. Dixon into that room?</p> <p>24 A. He requested to go there to see where our</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>115</p> <p>1 computer, same exact cabinets</p> <p>2 BY MR. FLYNN:</p> <p>3 Q. The question again is, who owns those</p> <p>4 computers?</p> <p>11:11 5 A. I have no idea.</p> <p>6 I know I purchased all of them and</p> <p>7 eTreppid paid for all of them. I don't know if they</p> <p>8 were paid for through outside contracts. I don't</p> <p>9 know.</p> <p>11:11 10 Q. Do you know whether there are any source</p> <p>11 codes in those computers?</p> <p>12 A. The surveillance computers don't have</p> <p>13 anything, and -- don't have anything except for video</p> <p>14 recording software, which is outside third-party.</p> <p>11:12 15 This bank of computers has nothing on them</p> <p>16 anymore. Warren and I went and looked on each one</p> <p>17 and there's nothing on any of them.</p> <p>18 Q. Who --</p> <p>19 A. Just operating system.</p> <p>11:12 20 Q. Who else was in the room when you tried to</p> <p>21 look on those computers?</p> <p>22 A. Just Warren and me.</p> <p>23 Q. And you found nothing?</p> <p>24 A. That's correct.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>114</p> <p>1 containers were.</p> <p>2 Q. Now, I believe you had previously</p> <p>3 testified that these computers down here belong to</p> <p>4 eTreppid?</p> <p>11:10 5 A. I'm aware that some of them were paid for</p> <p>6 by various government agencies; I don't know which</p> <p>7 ones belong to us, which ones don't.</p> <p>8 Q. Just -- did you testify before the break</p> <p>9 that these belong to eTreppid?</p> <p>11:11 10 A. I don't believe I said that.</p> <p>11 Q. Okay. How many computers are there in</p> <p>12 this bank here next to Mr. Montgomery's work station?</p> <p>13 A. Currently, there's like 30 or less.</p> <p>14 Q. And do you have any knowledge of who owns</p> <p>11:11 15 those 30 or less computers?</p> <p>16 A. There's two banks, actually.</p> <p>17 MR. PEEK: Counsel, I can't see the</p> <p>18 witness.</p> <p>19 THE WITNESS: There's two banks</p> <p>11:11 20 The one bank I'm describing there is the</p> <p>21 one that Dennis worked on regularly. There's another</p> <p>22 bank that's just along the same wall that had all our</p> <p>23 security cameras hooked -- connected to it.</p> <p>24 They're the same kind of -- same exact</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>116</p> <p>1 Q. What did you do to try to access any of</p> <p>2 the source codes in those computers?</p> <p>3 A. We just logged on and looked to see what</p> <p>4 was on the drives and there was nothing; just</p> <p>11:12 5 operating system.</p> <p>6 Q. And every single file on all 30 computers</p> <p>7 had nothing?</p> <p>8 A. We do a regular partition of drive space,</p> <p>9 so the space where data is kept, the "E" partition</p> <p>11:12 10 had nothing on it; zero files.</p> <p>11 Q. Now, this 80 percent of the files, the</p> <p>12 150 million files that are still at eTreppid.</p> <p>13 A. Uh-huh.</p> <p>14 Q. How many of those have source codes?</p> <p>11:13 15 A. None of them. They're all sample test</p> <p>16 files.</p> <p>17 Q. I believe you testified that the game</p> <p>18 engines for your video program, there were about a</p> <p>19 hundred source code files still at eTreppid, correct?</p> <p>11:13 20 A. On Michael's machine.</p> <p>21 These aren't any of the other drives I've</p> <p>22 looked throughout the building.</p> <p>23 Q. Now, I understand that, but overall in the</p> <p>24 computers, there's about a hundred source codes just</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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1 for the video games that are still there?

2 A. Two hard drives: My machine and Michael's

3 machine.

4 Q. And --

11:13 5 A. I believe there might be a couple in the

6 SRCSERVER still.

7 Q. A copy on the SRCSERVER?

8 A. Correct.

9 Q. Let me show you your Declaration, signed

11:13 10 under the penalties of perjury. It was filed in this

11 case.

12 MR. FLYNN: On the copy I have, your

13 Honor, there's no date on it, it's blank, but there's

14 a signature, but it's among the documents that were

11:14 15 filed to support the TRO.

16 THE COURT: All right. Go ahead. I've

17 got it.

18 MR. FLYNN: You've got it, your Honor?

19 BY MR. FLYNN:

11:14 20 Q. Did you prepare this Declaration?

21 A. Yes.

22 Q. Did you, yourself, personally type it up?

23 A. No.

24 Q. Did you prepare it in conjunction with

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1 counsel for eTrepid?

2 A. Yes.

3 Q. Now, you say in paragraph 11, page three,

4 bottom of the page.

11:15 5 "From this check" --

6 This was after you returned from vacation

7 You can read along with me.

8 A. Okay.

9 Q. "From this check, I determined that all of

11:15 10 the eTrepid source code stored on each of these

11 servers had been deleted."

12 A. Right.

13 Q. Is that truthful?

14 A. It's a little bit of an overstatement

11:15 15 since the game engine, there's a copy of the game

16 engine probably still there.

17 Q. And how much -- how many of the files have

18 you not even checked yet?

19 A. The rest of the folders were completely

11:15 20 deleted.

21 If I could explain the way the structure

22 of the hard drive is.

23 Q. Sure.

24 A. We have four main folders on that

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1 SRCSERVER. The one called ET Latest was where all of

2 the source code, except for the game engine, was

3 stored.

4 The game engine, Michael and I kept as a

11:15 5 separate backup. We didn't -- since it only involved

6 he and I, it was only he and I that kept backups of

7 it, and Dennis was agreeable with this.

8 All the rest of the source code was kept

9 under this ET Latest folder and ET Development

11:16 10 folder.

11 Those folders were deleted, completely

12 deleted out; nothing existed underneath those.

13 Q. But since you were never given prior

14 access, as for the source codes for object tracking,

11:16 15 pattern recognition, and face recognition, you

16 wouldn't even know what source codes to look for,

17 would you?

18 A. I don't know if they were ever there. I

19 wouldn't know. I don't know what the actual programs

11:16 20 were called.

21 There's a couple hundred different

22 projects underneath that, that were underneath that

23 ET Latest folder.

24 Q. So, again, you don't know whether they

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1 were ever there, correct?

2 A. Correct.

3 Q. You don't know whether the government took

4 them, correct?

11:16 5 A. Correct.

6 Q. And if they were ever there, you have no

7 knowledge of how they ever, at some point, were not

8 there?

9 A. Well, if they were never there, I have no

11:17 10 idea if they disappeared, correct.

11 Q. Right

12 If the assumption is at some point they

13 were there, without using the word deleted, you have

14 no knowledge of how, at some point, they were there

11:17 15 and then not there?

16 A. I could only tell you what was there based

17 on what I'm recovering.

18 Q. And you were never given access --

19 Strike that.

11:17 20 You never had a conversation with

21 Mr. Montgomery about the methodology of the intrusion

22 detection devices that the government wanted to put

23 on these computers and these computers, did you?

24 A. No.

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1 MR. FLYNN: And for the record, when I
 2 said these computers, I was referring to the 30 or so
 3 computers next to Mr. Montgomery's work station and
 4 the two computers in the so-called private area
 11:18 5 THE COURT: In Exhibit 1?
 6 MR. FLYNN: On Exhibit 1.
 7 Thank you, your Honor
 8 BY MR. FLYNN:
 9 Q. Who were the programmers downstairs that
 11:18 10 you referred to?
 11 A. You want the list by name?
 12 Q. Yes.
 13 A. Krishna Tangirala that I mentioned before.
 14 "Chu" --
 11:18 15 Q. Are his files missing?
 16 A. Yes. His hard drive had a completely new
 17 hard drive when I came back from my trip.
 18 Q. And the next one?
 19 A. Chucal Huang.
 11:18 20 Q. Are his files missing?
 21 A. He's working on something that I don't
 22 even know what it is, so I couldn't tell you.
 23 Some other people checked his machine; I
 24 didn't.
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1 Q. But you don't know whether this
 2 individual's files are missing or not?
 3 A. No, I can't say for sure.
 4 Q. Who is the next programmer?
 11:18 5 A. Suchita Samant.
 6 Q. Are his files missing?
 7 A. That's a lady.
 8 She has reported to somebody else besides
 9 me, as well.
 11:18 10 Q. So you don't know?
 11 A. I don't know.
 12 Then --
 13 Q. When you say "all" in your Declaration,
 14 were you referring to their files, too?
 11:18 15 A. I was talking about the two servers I had
 16 under my control.
 17 Q. And, of course, you never had under your
 18 control the 30 or so computers next to
 19 Mr. Montgomery's work station on Exhibit 1 and the
 11:18 20 private area; is that correct?
 21 A. Correct.
 22 Q. And who is the next individual?
 23 A. Zehang Sun.
 24 Q. Were his files missing?
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1 A. He had his hard drive taken away from him.
 2 Q. By who?
 3 A. He said by Dennis.
 4 Q. So right now, this individual has no hard
 11:19 5 drive?
 6 A. He had his work-in-progress hard drive
 7 removed -- the removable drive taken out. His
 8 operating system drive is in there.
 9 Q. Were there any files on that?
 11:20 10 A. No.
 11 Q. Who is the next individual?
 12 A. Not that I know of. Not that I know of.
 13 The next one in the room is -- I only
 14 remember his first name, Yong Mian.
 11:20 15 Q. Were any of his files missing?
 16 A. I don't know.
 17 I didn't -- half of the people downstairs,
 18 I only talked to maybe three of them. The rest of
 19 them were spoken to by Jessie and Patty.
 11:20 20 Q. How many people are there downstairs?
 21 A. There are three more, in addition to the
 22 ones I've mentioned.
 23 Q. So since you've never spoke to them, you
 24 don't know whether any of their files are missing,
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1 either?
 2 A. I only know what I was told by the others
 3 who checked their computers.
 4 Q. You don't personally know?
 11:20 5 A. Right.
 6 Q. You mentioned something about a law
 7 enforcement person coming to eTreppld?
 8 A. No, I said law enforcement told me not to
 9 run the machines anymore, some of the machines that I
 11:21 10 was running recovery on.
 11 They never came to the building.
 12 Q. So you had a telephone conversation with
 13 this person?
 14 A. I went to go meet him outside the
 11:21 15 building.
 16 Q. Who is this law enforcement person?
 17 THE WITNESS: Am I supposed to say?
 18 MR. PEEK: Your Honor, the law enforcement
 19 individuals have asked us not to identify that there
 11:21 20 is ongoing investigation, so he's a little reluctant
 21 to say that.
 22 THE COURT: Well, you know --
 23 MR. PEEK: So I know this is sealed, so --
 24 but they are concerned.
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<p>125</p> <p>1 THE COURT: Well, I think that -- I mean,</p> <p>2 one of the things that I was going to address here</p> <p>3 before we took our noon recess is this whole issue of</p> <p>4 classified information, what level of classification</p> <p>11:21 5 we're talking about, and frankly, Mr. Flynn, I</p> <p>6 thought I heard you say, and I made a note of it,</p> <p>7 that there's going to be a certain point at which we</p> <p>8 need to have this private meeting, after which this</p> <p>9 whole matter is going to or may go to Federal Court.</p> <p>11:22 10 MR. FLYNN: Yes, your Honor.</p> <p>11 THE COURT: Am I mistaken about that?</p> <p>12 MR. PEEK: Well, that's what he said; I</p> <p>13 don't think it's going to go to Federal Court.</p> <p>14 THE COURT: I know, but let me hear --</p> <p>11:22 15 MR. FLYNN: No, your Honor, you're not</p> <p>16 mistaken and, yes, your Honor, we are going to reach</p> <p>17 that point.</p> <p>18 I've now learned from this witness that he</p> <p>19 doesn't even know five percent enough of what we're</p> <p>11:22 20 talking about to testify about it, and the only one,</p> <p>21 probably, is Mr. Montgomery.</p> <p>22 Mr. Trepp apparently doesn't know, either.</p> <p>23 So at some point, Mr. Trepp is going to</p> <p>24 have to be -- Mr. Montgomery is going to have to be</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>127</p> <p>1 would be here, or the U.S. Attorney's office would be</p> <p>2 here, or we would have a court order from some</p> <p>3 federal government or agency directing me with regard</p> <p>4 to how far this process could go.</p> <p>11:23 5 Until I get that, then any question that's</p> <p>6 asked is going to be answered, so --</p> <p>7 MR. PEEK: Your Honor, this was just</p> <p>8 related to law enforcement issues; this wasn't</p> <p>9 related to the Department of Defense.</p> <p>11:24 10 THE COURT: Well, I -- whatever it is,</p> <p>11 until somebody cites me to a statute or until</p> <p>12 somebody gives me a court order that says this stuff</p> <p>13 can't be discussed, then when a question is asked,</p> <p>14 I'm going to order it to be answered.</p> <p>11:24 15 MR. PEEK: We're happy to let him answer,</p> <p>16 your Honor.</p> <p>17 THE COURT: So --</p> <p>18 MR. PEEK: I just was --</p> <p>19 THE COURT: But back to my -- my question</p> <p>11:24 20 is, is there someone at the Department of Defense or</p> <p>21 the other federal agency with whom I should have a</p> <p>22 discussion about what should go forward in this case?</p> <p>23 And if so, I would ask you to have that</p> <p>24 individual contact me or to do something, because I'm</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>126</p> <p>1 on the witness stand and he's going to have to go at</p> <p>2 least to December '02 -- and I'll give you a copy of</p> <p>3 this chronology -- and we're going to reach that</p> <p>4 point at that time because I was wondering if,</p> <p>11:22 5 frankly, if this individual knew enough --</p> <p>6 THE COURT: Well, I guess --</p> <p>7 MR. FLYNN: -- and he doesn't.</p> <p>8 THE COURT: Well, I guess there's --</p> <p>9 Let me finish this conversation here.</p> <p>11:22 10 What I'm looking at is a couple of things.</p> <p>11 One, I've certainly enjoyed your company,</p> <p>12 gentlemen, very much, and I enjoy the issues; it's</p> <p>13 kind of an interesting case, but if this case is</p> <p>14 going to go somewhere else, then I don't want to sit</p> <p>11:23 15 here and go through a half a day or a day of</p> <p>16 testimony about things that, you know, I'm not going</p> <p>17 to be able to ultimately decide.</p> <p>18 Secondly, if there are things that are</p> <p>19 classified or potentially classified, I don't have</p> <p>11:23 20 enough understanding about those to make any kind of</p> <p>21 ruling whatsoever on it.</p> <p>22 Thirdly, I would assume, and I don't know</p> <p>23 this, but I would assume that if the federal</p> <p>24 government had a concern, the federal government</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>128</p> <p>1 not going to have secret meetings and continue the</p> <p>2 case and do all this other stuff unless I have a</p> <p>3 basis to do that.</p> <p>4 If I do, be happy to do it, but I don't.</p> <p>11:24 5 MR. PEEK: Your Honor, may I be heard on</p> <p>6 this because --</p> <p>7 THE COURT: Yeah, yeah.</p> <p>8 MR. PEEK: -- I think what's happening is</p> <p>9 that you're being given half of the story.</p> <p>11:24 10 The source code is a code that was being</p> <p>11 asked by the government under contract of eTreppid to</p> <p>12 develop that would do certain things, pattern</p> <p>13 recognition, anomaly detection, those kinds of -- it</p> <p>14 would perform those functions in an executable</p> <p>11:25 15 format.</p> <p>16 The Department of Defense provided to</p> <p>17 eTreppid certain classified material -- and I</p> <p>18 mentioned this to you the other day -- in the form of</p> <p>19 video, and you might can imagine what that is -- to</p> <p>11:25 20 try to see if the source -- if the code could</p> <p>21 actually operate and make pattern recognition and</p> <p>22 anomaly detection and facial recognition and object</p> <p>23 detection.</p> <p>24 But the source code itself is not</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p>129</p> <p>1 classified. It is not a classified piece of --</p> <p>2 Well, it's not classified in any way.</p> <p>3 It's just the information given to eTrepid that was</p> <p>4 classified on which the source code would operate.</p> <p>11:25 5 Now, some of those videos, there's a</p> <p>6 concern about where they are. So the OSI, as part of</p> <p>7 the Department of Defense, has been investigating</p> <p>8 eTrepid to find out what has happened to them, but</p> <p>9 you're being sort of given this impression that there</p> <p>11:26 10 is something out here that in the national security</p> <p>11 interest that we shouldn't be talking about, and</p> <p>12 that's not the case.</p> <p>13 If it were the case, you would have heard</p> <p>14 from the federal government, you would have heard</p> <p>11:26 15 from the United States District Court, you would have</p> <p>16 even seen a motion to stay this proceeding. We would</p> <p>17 address that in an abstention issue as to whether</p> <p>18 they were or were not.</p> <p>19 So I only raised the point about Sloan's</p> <p>11:26 20 testimony, Mr. Venable's testimony, because the law</p> <p>21 enforcement had asked not to disclose that there was</p> <p>22 the subject of an ongoing criminal investigation.</p> <p>23 That's the only reason I brought it up.</p> <p>24 THE COURT: All right. Well, this record</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>131</p> <p>1 then, I guess, if they -- I mean, if there's some</p> <p>2 statutory authority that we're not supposed to</p> <p>3 proceed with this thing, then I need to see it.</p> <p>4 If they don't want me to proceed with</p> <p>11:28 5 this, then they need to tell me that. If it's so</p> <p>6 secret that they can't tell me that, then we're just</p> <p>7 going to go ahead.</p> <p>8 MR. PEEK: We want you to proceed, your</p> <p>9 Honor. We'll tell you what the source code is --</p> <p>11:28 10 THE COURT: Well --</p> <p>11 MR. PEEK: -- as we go through the</p> <p>12 process.</p> <p>13 We have just started our case, we are only</p> <p>14 one witness into it, it is almost noon --</p> <p>11:28 15 THE COURT: Right.</p> <p>16 MR. PEEK: -- and I would ask that we</p> <p>17 proceed expeditiously because you told us we only had</p> <p>18 today. This is not a mini-trial or trial on the</p> <p>19 merits.</p> <p>11:28 20 THE COURT: I understand.</p> <p>21 I mean, here is my problem and I hope you</p> <p>22 can understand and appreciate that.</p> <p>23 It's like a lawyer stands up and says, "I</p> <p>24 object."</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p>130</p> <p>1 is sealed.</p> <p>2 Here is my position. I feel like I'm --</p> <p>3 you know, I'm not really out in the light in terms of</p> <p>4 what -- you know, what exactly it is you're saying.</p> <p>11:28 5 I feel like I'm in the dark on that, and until I have</p> <p>6 some solid statutory authority or something from the</p> <p>7 government or contact from the federal government,</p> <p>8 then I'm just going to go ahead and proceed because I</p> <p>9 don't have a basis not to proceed.</p> <p>11:27 10 MR. FLYNN: I understand, your Honor, and</p> <p>11 with all due respect to Mr. Peek, if I only gave you</p> <p>12 half the story, which admittedly I've even given you</p> <p>13 less, because there is, as I said, a dichotomy</p> <p>14 between the data compression technology that these</p> <p>11:27 15 folks made a deal on and all this government stuff.</p> <p>16 That's the bottom line to the proceeding</p> <p>17 before you.</p> <p>18 Now, in all this government material, the</p> <p>19 way, as I understand it, on this level, the</p> <p>17 20 government works, the individuals involved, who have</p> <p>21 been at eTrepid Technologies, would never contact</p> <p>22 any U S. Attorney and go into any court to disclose</p> <p>23 anything or seek any order.</p> <p>24 THE COURT: Well, they're out of luck,</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p>132</p> <p>1 And so, "What's your basis?"</p> <p>2 "Well, I'm not going to tell you what the</p> <p>3 basis is, but I object to this evidence."</p> <p>4 MR. FLYNN: That is the paradox.</p> <p>11:29 5 THE COURT: Can you --</p> <p>6 MR. FLYNN: That is the paradox the Court</p> <p>7 is confronted with, and I will say this is where we</p> <p>8 end up -- here's where we end up.</p> <p>9 There is no source code except in</p> <p>11:29 10 Mr. Montgomery's head. It has always been that way</p> <p>11 by contract. You will hear his testimony. It always</p> <p>12 had to be that way.</p> <p>13 THE COURT: I've read that. I've read</p> <p>14 that.</p> <p>11:29 15 MR. FLYNN: There is no source code that</p> <p>16 could be made to deliver to anyone, practically,</p> <p>17 pragmatically, legally or otherwise</p> <p>18 The bottom line for the Court is whether</p> <p>19 the source code that's in Mr. Montgomery's head,</p> <p>11:29 20 which is what we're fighting about, because of the</p> <p>21 conversations that Mr. Montgomery and Mr. Trepp had</p> <p>22 financially in the fall of 2005, involving hundreds</p> <p>23 of millions of dollars, is the reason for -- that's</p> <p>24 the reason we're in court today.</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>

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<p style="text-align: right;">133</p> <p>1 That code, if you want to call it, that's</p> <p>2 in Mr. Montgomery's head, has nothing to do with the</p> <p>3 deal that was made between these people for data</p> <p>4 compression technology, which is all over the</p> <p>11:30 5 contracts.</p> <p>6 THE COURT: I read that, too.</p> <p>7 MR. FLYNN: So where we're going to end up</p> <p>8 when Mr. Montgomery testifies, and I'll give the</p> <p>9 judge -- your Honor a heads up -- is there are</p> <p>11:30 10 thousands of lines of code involving this classified</p> <p>11 technology, notwithstanding what Mr. Peek says, that</p> <p>12 extremely few individuals in the government even know</p> <p>13 about.</p> <p>14 Mr. Montgomery and Mr. Trepp have signed</p> <p>11:30 15 documents that they would never disclose it to</p> <p>16 anyone.</p> <p>17 That's where we're going to end up, your</p> <p>18 Honor.</p> <p>19 The only way the Court can understand the</p> <p>11:30 20 ramifications of this technology is for</p> <p>21 Mr. Montgomery to tell you, much of which Mr. Trepp</p> <p>22 doesn't even know, how it was used, what the results</p> <p>23 of that were over the last several years.</p> <p>24 THE COURT: And you're saying he cannot</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">135</p> <p>1 interesting to this filibuster is that we know that</p> <p>2 there were 200 gigabytes deleted off of the</p> <p>3 SRCSEVER, off the ISASERVER, and out of the RAID</p> <p>4 box, and he's saying, "Well, that doesn't" -- "That's</p> <p>11:32 5 meaningless. That's not a source code."</p> <p>6 But you never hear him say or explain what</p> <p>7 it was that he did delete. We have this sort of</p> <p>8 inference, if you will, he's trying to put out</p> <p>9 there -- implication, if you will -- that there was</p> <p>11:32 10 something put on a program that automatically</p> <p>11 deleted, and we'll hear from that later, but --</p> <p>12 THE COURT: I'm getting that part. I'm</p> <p>13 just -- I just have a concern about this security</p> <p>14 issue, that we're going to get to a point where</p> <p>11:32 15 there's going to be evidence or information that's</p> <p>16 critical to either side, and one side or the other is</p> <p>17 going to say, "I'm sorry, I can't tell you about</p> <p>18 that."</p> <p>19 MR. PEEK: Well --</p> <p>11:32 20 THE COURT: All I'm saying is when that --</p> <p>21 MR. PEEK: -- then they fall on their</p> <p>22 burden.</p> <p>23 THE COURT: All I'm saying --</p> <p>24 Well, who has the burden?</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>
<p style="text-align: right;">134</p> <p>1 tell me that?</p> <p>2 MR. FLYNN: Absolutely cannot tell you</p> <p>3 that.</p> <p>4 THE COURT: Why --</p> <p>11:31 5 MR. FLYNN: And I believe the only thing</p> <p>6 that I can come up with is that he and Mr. Trepp</p> <p>7 could go into chambers, and Mr. Trepp could verify</p> <p>8 what Mr. Montgomery will tell you. I have no other</p> <p>9 way of --</p> <p>11:31 10 MR. Peek: Your Honor, we're going to do</p> <p>11 this in open court.</p> <p>12 THE COURT: You have a --</p> <p>13 MR. PEEK: We're going to --</p> <p>14 THE COURT: Well, we're going to do it</p> <p>11:31 15 where I say --</p> <p>16 MR. PEEK: I understand that, your Honor,</p> <p>17 but I would like to have it done in open court, as</p> <p>18 opposed to just send two individuals into your</p> <p>19 chambers to discuss --</p> <p>11:31 20 THE COURT: Well, we're not going to even</p> <p>21 do that if I don't have some statutory basis for his</p> <p>22 saying he can't or won't disclose it.</p> <p>23 Give me that, and I'll say fine.</p> <p>24 MR. PEEK: And, your Honor, what I find</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>	<p style="text-align: right;">136</p> <p>1 All I'm saying is that if we get to that</p> <p>2 point, and I'm trying to give both sides a heads up,</p> <p>3 what I'm saying to you, Mr. Flynn, is if we get to</p> <p>4 that point and you or your client tell me that you</p> <p>11:32 5 cannot disclose that, without some citation to some</p> <p>6 authority for that purpose, I'm going to order it to</p> <p>7 be disclosed.</p> <p>8 If it's not disclosed, I'm going to</p> <p>9 order -- I'm going to issue a show cause order with</p> <p>11:33 10 regard to contempt.</p> <p>11 And I'll do the same on the other side.</p> <p>12 I don't want to do that. I want to do the</p> <p>13 right thing. But you need to tell me what the right</p> <p>14 thing is and give me citation to some authority.</p> <p>11:33 15 That's all I'm saying.</p> <p>16 MR. FLYNN: I understand, your Honor, and</p> <p>17 I'm convinced at this point that the Court wants to</p> <p>18 do the right thing and --</p> <p>19 THE COURT: That's what I get paid for.</p> <p>11:33 20 Huge salary that I --</p> <p>21 MR. FLYNN: And I don't know whether they</p> <p>22 intend to call Mr. Montgomery.</p> <p>23 I think a lot will become clear when we</p> <p>24 call him, and you'll see when we reach a certain end</p> <p>LIZA CHAPEN, CCR, RMR (775) 323-5492</p>